

No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**

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ALFONSO PINEDA-HERNANDEZ,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

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

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**APPENDIX**

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## APPENDIX A

In the  
United States Court of Appeals  
For the Seventh Circuit

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Nos. 18-1890 & 18-2261

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*v.*

JOSE TRINIDAD GARCIA, JR., and  
ALFONSO PINEDA-HERNANDEZ,  
also known as Flaco,

*Defendants-Appellants.*

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Appeals from the United States District Court for the  
Southern District of Indiana, Indianapolis Division.  
No. 1:15CR00200 — **Jane Magnus-Stinson, Chief Judge.**

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ARGUED SEPTEMBER 20, 2019 — DECIDED JANUARY 22, 2020

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Before WOOD, *Chief Judge*, and MANION and ROVNER, *Circuit Judges*.

MANION, *Circuit Judge*. Police found over 80 grams of red methamphetamine in a car. The ensuing investigation—dubbed “Code Red”—lead to the indictment of 12 people for a drug-distribution conspiracy. Eleven, including Garcia, pleaded guilty. Garcia argues the judge improperly enhanced

his sentence based on a prior drug conviction. We agree with Garcia. Pineda-Hernandez alone stood trial. He claims multiple errors involving an alleged language-interpretation debacle. He also argues the judge improperly augmented his sentence based on his role. We disagree with Pineda-Hernandez.

### I. GARCIA

Pleading guilty, Garcia admitted he participated in or could have reasonably foreseen the distribution of about 3.5 kilograms of a mixture containing meth and at least 1 kilogram of heroin. As he admitted the conspiracy involved over 500 grams of a mixture containing meth, he faced a statutory range of 10 years to life in prison with no prior conviction for a “felony drug offense.” 21 U.S.C. § 841(b)(1)(A)(viii).<sup>1</sup> But he faced a range of 20 years to life with one prior conviction for a “felony drug offense.” *Id.* The government sought the 20-year minimum based on Garcia’s conviction under Indiana Code § 35-48-4-10(a)(1) for an offense that occurred in March 2014. At that time, Indiana banned manufacturing or delivering “marijuana, hash oil, hashish, or salvia.” (The crime was a felony because the recipient or intended recipient was under 18. I.C. 35-48-4-10(b)(1)(A).) The district judge imposed the 20-year mandatory minimum. Garcia appeals.

He concedes plain-error review applies as he failed to object below. But he argues the judge plainly erred by treating the prior conviction as a “felony drug offense” to enhance the sentence. Under plain-error review, Garcia must show “(1) an error occurred, (2) the error was plain, (3) it affected the defendant’s substantial rights, and (4) it seriously affected the

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<sup>1</sup> Each citation to a statute references the version in effect at the relevant time, unless otherwise noted.

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fairness, integrity, or public reputation of the proceedings.” *United States v. Pierson*, 925 F.3d 913, 919 (7th Cir. 2019).

When Garcia committed the prior drug offense, Indiana’s statute prohibited dealing in marijuana, hash oil, hashish, or salvia. Here is the text of the statute, arranged in columns:

(a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

marijuana, hash oil, hashish, or salvia,  
pure or adulterated ...

commits dealing in marijuana, hash oil, hashish,  
or salvia, a Class A misdemeanor, except ...

(b) The offense is:

(1) a Class D felony if:

(A) the recipient or intended re-  
cipient is under eighteen (18)  
years of age ....

I.C. 35-48-4-10.

The question is whether Garcia’s prior conviction under this statute is a “felony drug offense” for purposes of the enhancement for his federal crime. Federal law defined “felony drug offense” as:

an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.

21 U.S.C. § 802(44). Federal law also defined these particular substances. “Narcotic drug” generally includes opium, opiates, poppy straw, coca leaves, cocaine, ecgonine, and any compound containing any of these substances. *Id.* § 802(17). “Marihuana” generally means all parts of *Cannabis sativa* L. and every compound of this plant. *Id.* § 802(16). “Anabolic steroid” generally means any drug or hormonal substance related to testosterone. *Id.* § 802(41)(A). “Depressant or stimulant substance” generally means a drug containing barbituric acid or amphetamine, or lysergic acid diethylamide, or any drug containing a substance the Attorney General designated as having a potential for abuse because of its depressant, stimulant, or hallucinogenic effect. *Id.* § 802(9). (Foreshadowing: “felony drug offense” includes marijuana but not salvia.)

Courts use the categorical approach to determine whether a conviction under a state statute meets § 802(44)’s definition of “felony drug offense.” *United States v. Elder*, 900 F.3d 491, 497–501 (7th Cir. 2018). “The categorical approach focuses solely on whether the elements of the crime of conviction sufficiently match the elements of the crime referenced in the federal statute, while ignoring the particular facts of the case.” *Id.* at 498 (internal quotation marks and brackets removed) (quoting *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016)). Under the categorical approach, Garcia’s appeal is easy. The problem for the government is salvia. The Indiana statute plainly

prohibits it, but the federal definition of “felony drug offense” plainly does not include it. So the Indiana statute is broader than the federal definition. Indiana may convict a person for violating I.C. 35-48-4-10 even though he never dealt with a drug listed in the federal definition. Thus, under the categorical approach, a conviction under I.C. 35-48-4-10 is not a “felony drug offense” and cannot raise the mandatory minimum sentence for Garcia’s instant federal crime.

The government concedes Indiana’s statute includes salvia and concedes the federal definition of “felony drug offense” does not. The government essentially concedes I.C. 35-48-4-10 is overbroad under the categorical approach. But the government argues I.C. 35-48-4-10 is divisible, so the modified categorical approach applies. When a statute sets out alternative elements rather than merely alternative means, it is divisible, and courts use the modified categorical approach to determine which division formed the basis of the conviction. Here, if the statute’s list of drugs is a list of alternative elements rather than alternative means, then we would apply the modified categorical approach to determine which of the listed drugs supported Garcia’s prior conviction. If that drug were marijuana, then the prior conviction is a “felony drug offense” enhancing the present sentence. If that drug were salvia, then the prior conviction is not a “felony drug offense” and does not enhance the present sentence.

So the ultimate question is whether Indiana’s statute is divisible. Federal courts defer to state courts on the issue of whether a state statute is divisible. *Mathis*, 136 S. Ct. at 2256 (“This threshold inquiry—elements or means?—is easy in this case, as it will be in many others. Here, a state court decision definitively answers the question . . . ”). A state supreme court

decision on point generally controls. But reliance on a state intermediate court decision is appropriate in the absence of a decision from the State's highest court or a compelling reason to think the highest court would disagree with the intermediate decision. *Mathis* itself does not require a federal court to look only to the decisions of the State's highest court. Indeed, we recently looked to an Indiana Court of Appeals decision for the "most authoritative guidance" regarding the scope of particular Indiana drug crimes for purposes of determining whether that scope fell within the Armed Career Criminal Act's definition of a "serious drug offense." *United States v. Williams*, 931 F.3d 570, 576 (7th Cir. 2019) (discussing *Hyche v. State*, 934 N.E.2d 1176, 1179 (Ind. Ct. App. 2010)).

Here, decisions by Indiana's Supreme Court and Court of Appeals show the statute is not divisible. See *Duncan v. State*, 412 N.E.2d 770, 775–76 (Ind. 1980); *Everroad v. State*, 570 N.E.2d 38, 54 (Ind. Ct. App. 1991), *rev'd in part but summarily aff'd in relevant part*, 590 N.E.2d 567, 571 (Ind. 1992); *Martin v. State*, 374 N.E.2d 543, 545 (Ind. Ct. App. 1978). The Indiana Court of Appeals decision in *Everroad* is particularly instructive. The court applied Indiana Supreme Court precedent to an older version of I.C. 35-48-4-10. Indiana charged defendants with two counts under I.C. 35-48-4-10 based on a single occurrence: one for marijuana, one for hashish. On appeal, defendants argued they could only be convicted of one count under this statute even though two drugs itemized in the statute were involved. The intermediate court applied *Duncan* and concluded possessing marijuana and hashish is only one violation of I.C. 35-48-4-10. Defendants could not be convicted of separate counts for marijuana and hashish based on the same occurrence.

The intermediate decision in *Everroad* is currently the authoritative resolution of this issue by an Indiana court. Indiana's Supreme Court has not directly addressed this issue, although its decision in *Duncan* supported the intermediate decision in *Everroad*,<sup>2</sup> which is clear and unambiguous. Possessing marijuana and hashish is only one violation of I.C. 35-48-4-10. Salvia stands on equal statutory footing.

Thus, the list of drugs in Indiana's statute lists alternative means of committing a single offense. So the modified categorical approach does not apply. "Marijuana, hash oil, hashish, or salvia" are not alternative elements for alternative crimes. Rather, they are alternative means of committing a single crime. Therefore, under the categorical approach, if any of these drugs in Indiana's statute are not included in the list of drugs in the federal definition of "felony drug offense," then the Indiana statute is broader than the federal definition. And if the Indiana statute is broader, then a conviction under it is not a "felony drug offense" for enhancement purposes, regardless of which drug the defendant actually dealt. As already noted, inclusion of salvia in the Indiana statute excludes it from the federal definition of "felony drug offense." Thus, Garcia's prior conviction under I.C. 35-48-4-10 is not a "felony drug offense" and does not support the sentencing enhancement here. Application of this enhancement was plain error. But this does not mean Garcia is unaccountable. He was held accountable by the state court for his prior

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<sup>2</sup> The Indiana Supreme Court summarily affirmed the relevant part of the intermediate court's decision in *Everroad*. We need not evaluate whether this is more than perfect silence from the Indiana Supreme Court because reliance on an intermediate decision is legitimate absent persuasive indicia Indiana's highest court would reach a different conclusion.

conviction. We remand to the district court for resentencing without this prior conviction as an enhancer under 21 U.S.C. § 841(b)(1)(A) but we do not remove the prior conviction from the 18 U.S.C. § 3553(a) analysis. *See Portee v. United States*, 941 F.3d 263, 273 (7th Cir. 2019).

## **II. PINEDA-HERNANDEZ**

Pineda-Hernandez stood trial. He argues an interpreter botched the interpretation of the trial testimony of a key government witness. He argues the district judge compounded the problem by recalling the witness to testify again, the following day, with a different interpreter. He seeks remand for a new trial. In the alternative, he also appeals the imposition at sentencing of an upward adjustment based on his role.

### **A. TRIAL**

#### **1. Day One**

Pineda-Hernandez spoke little English, so the judge appointed two federally certified interpreters to assist him during trial: Claudia Rubio Samulowitz and Maria Conde-Barwise. The judge introduced them to the prospective jurors as “neutral parties serving the Court in providing an interpreting service to the Defendant in this case.” (Tr. Voir Dire, DE 629, 9:13–14.) Day one, including voir dire, jury selection, and evidence, proceeded without significant problems.

#### **2. Day Two**

Day two also passed without significant problems. The judge asked Pineda-Hernandez if he could understand the interpreters, and he said yes.

**3. Day Three: Barragan-Lopez testified**

On the third morning of trial, the government called Miguel Barragan-Lopez to testify against Pineda-Hernandez. Barragan-Lopez was a co-defendant who pleaded guilty. According to Pineda-Hernandez, Barragan-Lopez was “heavily involved in the alleged Code Red drug-distribution ring” and was a star witness for the government (“critical” and “key”). (Pineda-Hernandez’s Br., 8–9.)

Barragan-Lopez testified through Samuel Ramos, an interpreter hired by the government, not appointed by the court, and not federally certified. Before Barragan-Lopez testified, Pineda-Hernandez’s counsel agreed there were no issues with Ramos’s qualifications and agreed to have him interpret. So he did. The general process involved him listening to an attorney’s question in English, interpreting the question into Spanish for Barragan-Lopez, listening to his Spanish response, and interpreting the response into English. The court did not record audio at trial. The court reporter did not capture any Spanish in the transcript of Barragan-Lopez’s testimony (save “Si” a few times). So we have no record of all the Spanish spoken by Ramos or Barragan-Lopez. Neither party asked the court to record or transcribe the Spanish.

Barragan-Lopez testified as follows. He dealt drugs in Indianapolis in 2013, was convicted of a felony drug crime, was deported, but soon returned to the United States because he owed money to people in Mexico. In 2015 he was involved in further drug activity that lead to the charges in this case. He faced a minimum of 20 years in prison because of his prior felony drug conviction. He decided to cooperate with the government in exchange for a chance to receive a lower sentence.

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Barragan-Lopez admitted that around May 2015, he entered into an arrangement with Pineda-Hernandez (also known as "Flaco") and others involving meth distribution. Barragan-Lopez testified about Pineda-Hernandez's role:

Q What was Flaco's role?

A What do you mean Flaco's role?

Q In this business arrangement regarding the distribution of methamphetamine, what did Flaco do?

A He received it.

Q Okay. Received it from where?

A From Mexico.

Q How do you know that?

A Because he told me that.

Q Okay. What did Niko do? I am sorry, what did Grenas do?

A Help him distribute it.

Q Okay. What did you do?

A Help Grenas and he to distribute it.

Q Now, when you talk about "he," are you referring to Flaco, the Defendant, Pineda-Hernandez?

A Yes.

(Trial Tr., DE 633, 393:6–21.)

Barragan-Lopez confirmed his testimony about Pineda-Hernandez ("Flaco") a bit later:

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Q All right. So you have told us about this distribution system where Flaco had obtained the methamphetamine. The methamphetamine was distributed down through Grenas, to you, to Big Mike, and College?

A Yes.

Q How much did you have to pay for a pound of methamphetamine that was provided to you by Grenas from Flaco?

A Eight, 8,000.

(*Id.* at 396:22–397:4.)

Barragan-Lopez testified about the color of the meth he received from Pineda-Hernandez (“Flaco”):

Q Okay. As you sit here today, do you recall the color of the methamphetamine that you received from Flaco?

A Yes.

Q What color was it?

A Pinky transparent.

Q Now, was some of the methamphetamine that you received actually white?

A Yes.

\*\*\*

Q Mr. Barragan, I am going to show you what has been introduced as Government’s Exhibit 14 and see if that looks like the methamphetamine or the white methamphetamine that

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you would have received from Flaco through Grenas?

A Yes.

Q Now, you have indicated that some of the methamphetamine you received was, I believe, pinkish or red; is that what you testified to?

A Yes.

\*\*\*

Q And if we look at that photograph [Exhibit 156] is that what some of that red or pink methamphetamine looked like?

A Yes.

\*\*\*

Q Once again, did that pinkish or red methamphetamine that you received from Flaco through Grenas, did it look like the substance that we see here in Exhibit 158?

A Yes.

\*\*\*

Q Did you learn how that reddish—or pink-ish-colored methamphetamine got to be that way as compared to being white, which we see in Exhibit No. 14?

A Supposedly it was made up.

Q Made up of what?

A With Gatorade.

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Q How do you know that?

A Because Flaco told me.

Q Did Flaco tell you that he, himself, had used the Gatorade to make the meth which caused it to turn pinkish or red?

A Yes.

(*Id.* at 403:5–404:25.)

Shortly into cross-examination, Conde-Barwise approached for a bench conference and said Ramos misinterpreted a number. The judge had defense counsel repeat the question, thereby fixing the problem right away. A little later Conde-Barwise again approached the bench and said Ramos misinterpreted a drug's name. The judge repeated the question to the witness, again fixing the problem right away.

Defense counsel elicited clarity from Barragan-Lopez regarding Pineda-Hernandez's role:

Q And your testimony today, under oath, is that my client, who has been known in this case as Flaco, was the head of that organization?

A Yes.

Q It was your testimony today, under oath, that he was the source of the methamphetamines?

A Yes.

Q Is your testimony today that he colored the drugs with Gatorade?

A Yes.

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Q Is your testimony today that he had a source that was out of the country?

A Yes.

(*Id.* at 436:17–437:4.)

Defense counsel also elicited clarity regarding the meth:

Q So your testimony today is that you have gotten red methamphetamine?

A Yes.

Q And large crystal methamphetamine?

A Yes.

(*Id.* at 445:2–6.)

At the end of Barragan-Lopez’s testimony, the judge asked the jury if it had any questions for this witness. It did not.

According to Pineda-Hernandez, Barragan-Lopez was a star government witness because he testified about the structure of the criminal enterprise, identified Pineda-Hernandez as a central figure, and described tension between members of the ring. Pineda-Hernandez argues Ramos’s interpretation during this key testimony was ineffective. Outside the jury’s presence, during the lunch recess after Barragan-Lopez finished testifying, the two court-appointed interpreters told the attorneys and judge about errors in Ramos’s interpretations. Samulowitz said most of the omissions were at the end of sentences. She said there were many differences in meaning that were not crucial, but they started to accumulate. She said, “[N]ot all the sentences made sense at one point or another in Spanish. When we noticed great differences in meaning, we

felt the need to interfere . . . ." (*Id.* at 451:13–16.) Samulowitz recommended a federally certified interpreter take over.

The judge quickly understood the interpretation was potentially problematic. She asked if Samulowitz or her colleague, Conde-Barwise, could take over interpreting. They agreed. She asked the parties if they accepted. They did. Then the judge asked counsel, "[D]o you want us to recall Mr. Barragan-Lopez to reexamine him?" (*Id.* at 452:25–453:1.) Before receiving an answer, the judge asked Samulowitz for examples of misinterpretations. After explaining that she could not give many details, Samulowitz gave only one example:

The question was, "When did the Defendant get out of the car?" The translation should have, should have been "as soon as the car stopped," and it was something like, "as much as he could stand up." Which, if you translate that into English it makes sense, but when you say it in Spanish, it doesn't. That is the best example this interpreter can give at this point, but there were a lot of omissions, Your Honor, towards the end of every, of every question, of every answer back into English or questions into Spanish. There was—it was obvious that the ability to retain the information for the whole question was not there because every question kept being interrupted to "chunk it," as we say.

(*Id.* at 454:22–455:9.) The judge pressed Samulowitz for more examples, but she had none. She deferred to her colleague, Conde-Barwise, who gave two examples.

One, Conde-Barwise noted the prosecutor asked the witness about drugs he received from Pineda-Hernandez *through* Niko, but Ramos interpreted the question into Spanish as received from Pineda-Hernandez *or* Niko. Conde-Barwise said this was just one example of numerous similar errors.

Two, she noted interpretation problems regarding testimony about distribution: "When [the prosecutor] was asking him about how the distribution process went or how they had different levels into distribution, distribution channel, I noted that he omitted parts and that he was not clear in the end how the distribution was made." (*Id.* at 457:10–15.)

Without waiting for the parties to answer her question about whether to recall the witness (and without either party asking to recall the witness) the judge *sua sponte* decided to recall him: "I think it is important that we recall him. I am just making that decision. So we will recall him." (*Id.* at 457:16–18.) As the discussion continued, Conde-Barwise emphasized that Ramos omitted two to three words at the end of every question. The prosecutor asked the judge whether she would strike Barragan-Lopez's first day of testimony.<sup>3</sup> The judge said she was not striking it. She said she would "tell the jury the funny thing called the truth, that there was an issue about the translation, and so the court-appointed interpreters are going to interpret his testimony." (*Id.* at 461:15–18.)

The judge asked defense counsel about bringing the witness back the next day. Defense counsel said that was acceptable. Discussion ensued about the process for interpreting the witness the next day. The prosecutor invited Pineda-

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<sup>3</sup> The prosecutor did not ask the judge to strike the testimony, but merely asked whether the judge would strike the testimony.

Hernandez to waive any objections he might have to any interpretation errors. Pineda-Hernandez declined to waive. His attorney said, “He does not waive any translation errors. He would like for the witness to come back tomorrow.” (*Id.* at 471:5–6.)

Pineda-Hernandez did not object to recalling the witness and having one of the court-appointed interpreters interpret. The judge asked, “I just want to confirm for the record that you have no objection to the process the Court has outlined where we will recall the witness and have one of the Court interpreters serve as the interpreter?” And defense counsel said, “No objection, Your Honor.” (*Id.* at 505:9–13.)

#### **4. Day Four: *déjà vu***

Day four opened with the prosecutor raising three issues outside the presence of the jury.

One, the prosecutor argued the examples given by the two court-appointed interpreters of purported erroneous interpretations were sparse and immaterial. And one of the examples involving a dispute over whether the question concerned marijuana on one hand or methamphetamine and heroin on the other was not a misinterpretation but merely an instance of people hearing different things, the prosecutor argued.

Two, the prosecutor argued “the unspecified allegations of widespread translation errors” left only two options: either recall Barragan-Lopez to re-testify with a new interpreter or Pineda-Hernandez could waive any interpretation errors that might have occurred and the case would stand on the witness’s testimony as elicited on day three.

Three, the prosecutor stated his understanding that the judge was not making any finding about whether there were

interpretation errors. The prosecutor noted Ramos had not commented on the allegations of errors, had been unable to hear the interpretations made by the court-appointed interpreters to Pineda-Hernandez during trial, and might defend his interpretations as exactly right.

Defense counsel stated Pineda-Hernandez was not waiving any rights. The judge confirmed she was not making any finding that Ramos's interpretations were inaccurate. The judge noted that defense counsel had agreed to Ramos's qualifications. The judge explained her decision to recall Barragan-Lopez. She told Pineda-Hernandez that if he agreed that Barragan-Lopez could re-testify, then the jury would hear his testimony twice, and Pineda-Hernandez would waive any error in the fact that the witness testified twice. The judge asked Pineda-Hernandez if he wanted to proceed with the witness's testimony as elicited the day before or if he wanted the witness to be recalled. Pineda-Hernandez responded through Conde-Barwise: "I have made the decision that I would like to hear the testimony ... of this witness .... And I would not like to waive any right to any appeal. And so I would like for that witness to testify today." (Trial Tr., DE 634, 517:2-6.) The judge replied that by making that choice, Pineda-Hernandez was waiving the right to complain on appeal that the witness testified twice. But Pineda-Hernandez persistently insisted he was not waiving anything:

What I am saying, it was not my problem. It was not an issue for my attorney. I think this was an issue that came up that no one was planning for it to happen, and let me say this again, I do not want to waive my right. But let me say again—let me say it again, you have the last word. Do

as you deem fit. I would like for him to testify again.

(*Id.* at 517:16–21.) The judge did not press further for a waiver. She directed another interpreter, Elizabeth Sanchez, to remain with Pineda-Hernandez and interpret for him so Samulowitz and Conde-Barwise could work as a team to provide interpretation services for the witness.

The jury entered. The judge instructed it that an issue had been raised about the accuracy of Barragan-Lopez’s testimony the prior day, that the judge could not determine that issue because she was not fluent in Spanish, and that the parties agreed Barragan-Lopez will testify again with a different interpreter. The judge did not strike the witness’s prior testimony. Neither party asked her to. Nor did Pineda-Hernandez seek a mistrial. Referencing the movie *Groundhog Day*, the prosecutor began the repeat direct examination of the witness. Barragan-Lopez testified again about his prior felony drug crime, deportation, illegal re-entry, further drug activity leading to the charges in this case, and decision to cooperate with the government. Again he admitted that around May 2015, he entered into an arrangement with Pineda-Hernandez and others involving meth distribution. The prosecutor asked Barragan-Lopez about what Pineda-Hernandez did:

Q And in that arrangement, what did Flaco do?

A He was in charge.

Q Okay. What else did he do?

A He would call, for instance, he would call me so I could make arrangements with Grenas.

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Q To do what?

A Transactions with ice.

Q And is "ice" another name for methamphetamine?

A Yes.

Q Where did the ice or the methamphetamine come from?

A From Mexico.

Q And who obtained it from Mexico?

A In Flaco or in Grenas.

Q What was your role in the arrangement?

A Helping them sell it.

(*Id.* at 541:15–542:4.)

The prosecutor asked about financing:

Q [Y]ou told us that there was methamphetamine or ice that you were receiving that came from Grenas and came from Flaco. How much did you have to pay for that ice?

A 8,000.

Q Okay. And \$8,000 for what quantity?

A Per pound.

(*Id.* at 544:18–24.)

The prosecutor asked about the distribution chain:

Q [W]as that methamphetamine that had been imported from Mexico?

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A Yes.

Q And who imported the methamphetamine from Mexico?

A I don't know.

Q Okay. And when it was—who delivered the methamphetamine to you?

A Grenas.

Q And did Grenas tell you from where he had obtained the methamphetamine that he was delivering to you?

A From Flaco.

Q Okay. Did Flaco ever deliver methamphetamine to you?

A He would send it to me with Grenas.

(*Id.* at 546:9–21.)

The prosecutor asked about the color of the meth:

Q And how many total pounds of methamphetamine do you believe you received between May and August of 2015?

A Between 7 and 8.

Q Okay. Now, as you sit here today, do you recall the color of the methamphetamine that you received to distribute to your customers?

A Yes.

Q What color was it?

A It was pinkish, between pinkish and red—and red, and the other one was translucent.

\* \* \*

Q If we take a look at the photograph which is Government's Exhibit No. 156, is this—does this depict, or does this show what some of that red methamphetamine looked like?

A Yes.

Q Okay. And if we go to Exhibit No. 158, please, and does some of that pinkish or red methamphetamine that you received look like the substance which we see here in Government's Exhibit 157?

A Yes.

Q All right. Now, did you come to learn how this pink or red methamphetamine got to be pink or red as compared to the translucent color which we see in Government's Exhibit 14?

A Yes.

Q Okay. And how was that?

A They would do it with Gatorade.

Q Okay. Who would do it with Gatorades?

A Flaco.

Q How do you know that?

A Because he told me so.

(*Id.* at 551:16–553:17.)

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The prosecutor elicited further testimony regarding Barragan-Lopez's methamphetamine sources:

Q Now, so far we have been talking about this conflict with the methamphetamine that you believed had come from Grenas but had really come from Flaco. Now, at this same time, were you receiving some methamphetamine separately from Grenas?

A Yes.

(*Id.* at 574:15–20.)

On cross-examination, defense counsel again elicited clarity from Barragan-Lopez about Pineda-Hernandez's role:

Q Your testimony, under oath, is that my client was the source for the methamphetamines originally; is that correct?

A Yes.

Q Is your testimony that he colored it with Gatorade?

A Yes.

Q Is your testimony today that Grenas, or he is also known in this case as Niko, delivered all the methamphetamines to you?

A Yes.

(*Id.* at 588:17–25.)

At the conclusion of Barragan-Lopez's testimony on day four, the judge again asked the jury if it had any questions for him. Again, it did not.

At the end of day four, the judge and attorneys discussed jury instructions. The judge asked if the instructions should say anything special about Barragan-Lopez's testimony. The judge leaned against it. She did not notice any substantive differences between the two rounds: "I did not discern any difference, maybe some nuanced differences but nothing substantive. So I would prefer to maybe not even draw any attention to it . . ." (*Id.* at 680:2–6.) Both attorneys agreed there was no need for a special instruction on point. Neither attorney ever asked to strike Barragan-Lopez's day-three testimony.

## 5. Day Five

But on day five, the prosecutor proposed a jury instruction noting Barragan-Lopez testified twice because an issue was raised about the accuracy of the interpretation of his first testimony, instructing the jury not to give any extra weight to his testimony because he testified twice, and telling the jury to evaluate his testimony in accordance with the instructions. Defense counsel agreed to include that instruction, so the judge gave it to the jury after closing arguments. The jury deliberated and returned a verdict of guilty on both counts.

## 6. Analysis

Pineda-Hernandez raises three issues on appeal regarding the alleged interpretation debacle.

One, did the inaccurate interpretation of a key government witness violate Pineda-Hernandez's due process rights?

Two, did the district judge abuse her discretion by recalling this witness for a second day of testimony, especially when she did not strike the first, gravely misinterpreted day of testimony?

Three, did the judge abuse her discretion by failing to use resources and procedures available under the Court Interpreters Act?

**i. lost in translation**

Pineda-Hernandez complains of widespread interpretation inaccuracies during Barragan-Lopez's testimony on day three. But Pineda-Hernandez only points to three examples.

First: the alleged misinterpretation of the prosecution's English question about drugs received from Pineda-Hernandez *through* Niko (also known as "Grenas") into Spanish to the witness as received from Pineda-Hernandez *or* Niko.

Second: the alleged interpretation omissions and lack of clarity regarding distribution.

Third: the alleged color discrepancies.

The government argues Pineda-Hernandez waived the misinterpretation claims by endorsing the court's remedy of recalling the witness. We disagree. Pineda-Hernandez plainly and repeatedly said he was not waiving anything. In the alternative, the government urges forfeiture and plain-error review of the misinterpretation claims because Pineda-Hernandez did not object below. Again, we disagree. Counsel for both parties told the judge after the lunch recess on day three that the court-appointed interpreters raised interpretation errors. Defense counsel told the judge, "they said it was throughout and it was so great that they didn't want to continue but they wanted to bring it to our attention ..." (Trial Tr., DE 633, 450:22-24.) This amounts to an objection.<sup>4</sup> In the

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<sup>4</sup> See *Stone v. Morris*, 546 F.2d 730, 736 (7th Cir. 1976) ("The purpose of Rule 46 is to inform the trial judge of possible errors so that he may have

absence of waiver or forfeiture, the government concedes we review due process challenges to trial interpretations *de novo*.

A defendant is denied due process when “the accuracy and scope of a translation at a hearing or trial is subject to grave doubt . . . .” *United States v. Cirrincione*, 780 F.2d 620, 634 (7th Cir. 1985). The “basic constitutional inquiry” when determining the competency of interpretation is “whether any inadequacy in the interpretation made the trial fundamentally unfair.” *United States v. Leiva*, 821 F.3d 808, 820 (7th Cir. 2016) (quoting *United States v. Joshi*, 896 F.2d 1303, 1309 (11th Cir. 1990)). Mere interpretation “hiccups” do not create grave doubt. *Leiva*, 821 F.3d at 820. An interpretation need not be verbatim to be constitutionally sound if it “reasonably conveys the intent or the idea of the thought spoken.” *United States v. Gonzalez*, 319 F.3d 291, 296 (7th Cir. 2003) (quoting *United States v. Zambrana*, 841 F.2d 1320, 1337 (7th Cir. 1988)).

Pineda-Hernandez argues the grave misinterpretation of the testimony rose to the level of structural error. Structural errors “deprive defendants of ‘basic protections’ without which ‘a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . .’” *Neder v. United States*, 527 U.S. 1, 8–9 (1999) (quoting *Rose v. Clark*, 478 U.S. 570, 577–78 (1986)). Structural errors require automatic reversal, and are immune to harmless-error review.

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the opportunity to consider his rulings and to correct them if necessary. Normally that purpose can be adequately served only by the making of an objection on the record, but if the court and the other litigants know what action a party desires the court to take, the purpose of the rule is served. In such circumstances a formal objection is not required, and the failure of the court to take the desired action may be asserted as error on appeal.” (internal citation omitted).)

As for the claim of widespread error throughout the interpretations, we do not see evidence of it. We compared Barragan-Lopez's testimony on day three to his testimony on day four. The questions and answers on the two days did not exactly mirror each other, but that seems to be a function of the slightly different approaches. A comparison of the two days does not support the claim there was significant widespread error on day three. Pineda-Hernandez has never claimed any interpretation problems regarding Barragan-Lopez's testimony on day four. Using day four as a referential Rosetta Stone, we do not see indicia of significant widespread interpretation errors on day three. Pineda-Hernandez has the burden to support his claim of widespread error, but he has not done so.

As for the particular instances of alleged misinterpretations, they did not violate Pineda-Hernandez's right to due process. Pineda-Hernandez only alleges three specific interpretation errors: *through* versus *or*, testimony regarding distribution, and testimony regarding color.

First, Conde-Barwise said Ramos interpreted the prosecutor's English question ("a question," "the question") about drugs "that you received from Flaco *through* Grenas" into Spanish for the witness as "that you received from Flaco *or* Grenas." (Trial Tr., DE 633, 457:1-6, emphasis added.) Conde-Barwise did not identify this question with more specificity. She only pointed to this happening once. But the transcript shows the prosecutor asked the witness twice on day three about meth he "received from Flaco *through* Grenas." The prosecutor showed an exhibit and asked if it looked like the white meth "that you would have received from Flaco *through* Grenas?" The witness said, "Yes." (*Id.* at 403:17-21.)

Then the prosecutor showed an exhibit depicting more meth and asked “did that pinkish or red methamphetamine that you received from Flaco through Grenas, did it look like the substance that we see here in Exhibit 158?” Again, the witness said, “Yes.” (*Id.* at 404:8–12.)

Pineda-Hernandez argues this allegedly grave misinterpretation is a constitutional problem because it concerns “how the Code Red conspiracy *procured drugs for sale*—the very thrust of the case . . .” (Pineda-Hernandez’s Br., 25.) He also argues the witness’s misinterpreted testimony about Pineda-Hernandez’s role in the conspiracy was inconsistent with the witness’s testimony on recall the next day. (*Id.* at 30.)

But there is no constitutional problem here. On day three, as noted above, the prosecutor elicited clarity from Barragan-Lopez regarding the procurement and distribution process: “So you have told us about this distribution system where Flaco had obtained the methamphetamine. The methamphetamine was distributed down through Grenas, to you, to Big Mike, and College?” “Yes.” (Trial Tr., DE 633, 396:22–397:1.) And on day four’s direct examination, as noted above, Barragan-Lopez confirmed that Grenas delivered the meth to Barragan-Lopez, that Grenas said he got it from Pineda-Hernandez, and that Pineda-Hernandez would send the meth to Barragan-Lopez with Grenas. (Trial Tr., DE 634, 546:14–21.)

Moreover, as shown above, defense counsel also elicited clarity about Pineda-Hernandez’s role while cross-examining Barragan-Lopez on day three. The witness confirmed it was his testimony Pineda-Hernandez “was the head of that organization,” “was the source of the methamphetamines,” “colored the drugs with Gatorade,” and “had a source that was out of the country.” (Trial Tr., DE 633, 436:17–437:4.) Pineda-

Hernandez does not point to any problems with the interpretations during this exchange. And defense counsel elicited similar clarity from this witness on day four: he confirmed Pineda-Hernandez “was the source for the methamphetamines originally” and “he colored it with Gatorade.” The witness confirmed Grenas “delivered all the methamphetamines” to the witness. (Trial Tr., DE 634, 588:17–25.) So even if Ramos misinterpreted the English “through” into the Spanish for “or” twice—which is more than Conde-Barwise claims—the error was corrected by numerous other questions and answers which clarified that Pineda-Hernandez was the source of the methamphetamine.

Second, Conde-Barwise raised a problem she called “more generic.” She said when the prosecutor asked about the distribution process, Ramos omitted parts and it was not clear in the end how distribution occurred. But, again, a comparison of the testimony over two days does not reveal significant interpretation errors in this regard. And both attorneys, on both days, elicited ample clarification.

Third, Pineda-Hernandez argues Barragan-Lopez’s testimony about the meth color changed when his interpreters did. No interpreter raised a problem on the record regarding the color testimony. It seems Pineda-Hernandez’s only basis for claiming a problem regarding the color testimony is his claim that the testimony changed from day three to day four. But it did not change significantly.

On day three the witness divided the meth into two categories: colored and white. Specifically, as noted above, he testified some meth was “[p]linky transparent” (Ramos’s interpretation of answer into English), “pinkish or red” (prosecutor’s English question, eliciting affirmation), “red or pink”

(ditto), “reddish—or pink-ish-colored” (ditto), and “red” (defense counsel’s English question, eliciting affirmation). And he testified some meth was “white” (prosecutor’s English questions, eliciting affirmation).

On day four the witness divided the meth into the same two categories. He testified some meth “was pinkish, between pinkish and red—and red” (Conde-Barwise’s interpretation of answer into English), “red” (prosecutor’s English question, eliciting affirmation), “pinkish or red” (ditto), and “pink or red” (ditto). And he said some meth was “translucent” (Conde-Barwise’s interpretation of answer into English).

We fail to see any significant difference between day three’s “[p]inky transparent,” “pinkish or red,” “red or pink,” “reddish—or pink-ish-colored,” and “red” versus day four’s “pinkish, between pinkish and red—and red,” “red,” “pinkish or red,” and “pink or red.” Each day’s palette carried the same nuances in hue, typical of Picasso’s Rose Period. There is no reason to think Ramos made any interpretation errors in this regard. The other interpreters did not even claim he did. Indeed, the clearest, boldest statement of “red” during Barragan-Lopez’s testimony on day three—remember, the concern is about whether Pineda-Hernandez fits into the “Code Red” conspiracy—came during defense counsel’s cross-examination of the witness. Moreover, if there were any ambiguity about Barragan-Lopez’s testimony about meth color, or any indication his testimony about color on day three did not match his testimony on day four because of misinterpretations, defense counsel had a chance to clarify the issues on cross-examination of the witness on day four. But she asked no questions about meth color during this opportunity, other than to confirm the witness’s testimony that Pineda-

Hernandez colored the meth with Gatorade. This was probably because there was no significant ambiguity or misinterpretation regarding the witness's testimony about meth color.

In sum, no widespread or particular interpretation errors deprived Pineda-Hernandez of due process.

## **ii. total recall**

Pineda-Hernandez argues the judge abused her discretion by recalling Barragan-Lopez for a second day of testimony, especially when she did not strike his first, gravely misinterpreted day of testimony. We already determined any errors in interpretation during the first day of testimony were harmless. But when the court-appointed interpreters raised their concerns on day three, the judge, not fluent in Spanish, could not determine the extent of any problem. So she decided to recall the witness. This helped ensure the jury would not rely on tainted testimony. And it revealed the witness's testimony on day three was not tainted, or at least not substantially or significantly tainted. As the judge recognized, the testimony on both days was essentially the same: "I did not discern any difference, maybe some nuanced differences but nothing substantive." (Trial Tr., DE 634 at 680:2-4.)

Pineda-Hernandez argues recalling the witness gave the government two bites at the apple, and the first session was practice. Pineda-Hernandez argues the witness's testimony differed between the two days. In particular, when on day three the government asked "what did Flaco do?" the witness responded "He received it," referring to meth. But when the government asked the same question the next day, the witness responded "He was in charge." But there was other testimony on day three that Pineda-Hernandez was in charge.

On day three's cross-examination, as noted above, Barragan-Lopez testified Pineda-Hernandez "was the head of that organization" and "was the source of the methamphetamines" (defense counsel's English words, eliciting affirmation).

As another example of a difference between the two days, Pineda-Hernandez points to the testimony regarding meth color. He argues the testimony on day four more closely tracked the government's theory and theme of the "Code Red" prosecution than did the testimony on day three. But we already explained there was no significant variation in the color testimony between the two days.

The mere hearing of the witness twice was not problematic because the judge instructed the jury not to give extra weight to the twice-told tale. Pineda-Hernandez agreed to this instruction. We presume the jury followed it. *United States v. Marchan*, 935 F.3d 540, 548 (7th Cir. 2019). Pineda-Hernandez has not rebutted this presumption. We also think it significant the jury never asked about Barragan-Lopez's testimony. It did not ask any questions of the witness after his testimony on day three or after his testimony on day four. Nor did it ask the court any questions about his testimony as it deliberated.

The judge did not abuse her discretion or otherwise err in recalling the witness.

### **iii. Court Interpreters Act**

Pineda-Hernandez argues the judge abused her discretion by failing to use resources and procedures available under the Court Interpreters Act. In particular, Pineda-Hernandez faults the judge for allowing a non-federally certified interpreter for Barragan-Lopez. But the problem for Pineda-Hernandez here is he agreed to have the non-federally certified

interpreter on day three, and he accepted the interpreter's qualifications. The judge did not abuse her discretion by allowing the non-federally certified interpreter, accepted by Pineda-Hernandez, to interpret on day three. Besides, the judge cured any error here by recalling the witness. Pineda-Hernandez also faults the judge for not recording audio of the trial. But he never asked her to record it. And she had no reason to think a recording of day three was necessary. She did not abuse her discretion by not recording the trial.<sup>5</sup>

## 7. Conclusion

The alleged interpretation debacle involves no reversible error. Pineda-Hernandez's claims of grave, widespread misinterpretations are unsubstantiated. The few particulars he points to are insignificant at most. The recall was not ideal, but it made the best of a potentially difficult situation.

## B. LEADERSHIP ENHANCEMENT AT SENTENCING

The guidelines provide a four-level upward adjustment for a defendant who "was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a). The guidelines also provide a 2-level upward adjustment for a defendant who "was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b)." *Id.* § 3B1.1(c).

At sentencing, the judge applied the § 3B1.1(a) adjustment to count I and the § 3B1.1(c) adjustment to count II. The result

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<sup>5</sup> Neither party seems to have asked the court reporter if she recorded any audio during the trial, or if the computer-aided transcription process documented any Spanish. Certainly neither party provides us with any evidence of this nature. We decline to pursue these leads on our own.

for each count was an adjusted offense level of 42. Without the enhancements, the guidelines ranges would have been 235 to 293 months for count I and 292 to 365 months for count II (subject to a statutory maximum of 20 years for count II). But with the enhancements, the guidelines range for each count was 360 months to life (subject to the statutory maximum for count II). The judge imposed a below-guidelines sentence of 300 months on count I concurrent with 240 months (the statutory maximum) on count II.

Pineda-Hernandez challenges the application of the leadership enhancement.<sup>6</sup> We review fact findings tied to a guidelines enhancement for clear error. *United States v. Collins*, 877 F.3d 362, 363 (7th Cir. 2017). “Whether a defendant exercised a managerial role in the charged offense is a factual determination that we review under the clearly erroneous standard.” *United States v. Hall*, 101 F.3d 1174, 1176 (7th Cir. 1996). A fact finding is clearly erroneous only if, after reviewing the

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<sup>6</sup> Pineda-Hernandez certainly challenges the leadership enhancement for count I. It was not clear from his initial appellate brief whether he also challenged the leadership enhancement for count II. Sometimes he referred to “enhancements” in the plural, but sometimes to “enhancement” in the singular. He did at least specifically mention the enhancement for count II, but he did not seem to make specific arguments about it. The government responded that it appeared Pineda-Hernandez was not challenging the leadership enhancement regarding count II. And the government argues that even without the leadership enhancement for count I there was no prejudice to Pineda-Hernandez because the offense level would be 42 anyway because count II reached that level and Pineda-Hernandez did not challenge it. In reply, Pineda-Hernandez does not explicitly say he is also challenging the leadership enhancement for count II, he does not dispel the government’s suggestion that he is not challenging it, and he does not address the 42-anyway argument. But either way, he would still lose.

evidence presented below, we are left with the definite and firm conviction a mistake has been made. *Id.* at 1177. Pineda-Hernandez concedes clear-error review applies.

An organizer or leader “exercised some degree of control over others involved in the commission of the offense” or was “responsible for organizing others for the purpose of carrying out the crime.” *United States v. Wasz*, 450 F.3d 720, 730 (7th Cir. 2006) (quoting with modifications *United States v. Carson*, 9 F.3d 576, 585 (7th Cir. 1993)). Crimes might involve multiple organizers and leaders. And a defendant might qualify for the enhancement even if he does not exercise complete dominion over every member of the enterprise at all times. *See United States v. Mustread*, 42 F.3d 1097, 1103 (7th Cir. 1994) (“Thus, at a minimum, a defendant must have had some real and direct influence, aimed at furthering the criminal activity, upon one other identified participant.”); *United States v. Brown*, 944 F.2d 1377, 1385 (7th Cir. 1991) (“Section 3B1.1 requires the exercise of some authority in the organization, the exertion of some degree of control, influence, or leadership.”). A defendant might qualify for the enhancement even if he did not pull all the strings all the time. *See Mustread*, 42 F.3d at 1104 (Others need not “have played marionette to the defendant’s puppeteer. For these purposes, to control another the defendant may simply have organized or in some way directed him.”).

Pineda-Hernandez makes colorable arguments he was not the leader or organizer. But these arguments do not overcome the bulk of the evidence showing he exercised some significant control and was responsible for some significant organization of others. We are not left with anything close to a definite and firm conviction a mistake has been made.

**III. CONCLUSION**

Garcia's prior conviction cannot enhance the mandatory minimum for his sentence. We VACATE Garcia's sentence and REMAND for resentencing.

Regarding Pineda-Hernandez, we AFFIRM.

**APPENDIX B:**  
**TRIAL COURT JUDGMENT, RULINGS, AND**  
**CONCLUSIONS OF LAW**

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Final Pretrial Conference Hearing Transcript (October 12, 2017) [Tr. Pg. 19].....	App. 38
Jury Trial Transcript – Day 3 (November 1, 2017) [Tr. Pgs. 376-377].....	App. 39
Jury Trial Transcript – Day 3 (November 1, 2017) [Tr. Pgs. 448-472].....	App. 41
Jury Trial Transcript – Day 3 (November 1, 2017) [Tr. Pgs. 505-508].....	App. 66
Jury Trial Transcript – Day 4 (November 2, 2017) [Tr. Pgs. 511-522].....	App. 70
Jury Trial Transcript – Day 5 (November 3, 2017) [Tr. Pg. 777] .....	App. 82
Judgment of Trial Court (May 23, 2018) .....	App. 83

1                   THE COURT: Thank you. That is fine.

2                   MR. LASHER: We will have several exhibits that are  
3 drug-related exhibits and firearms. We would like to display  
4 those to the jury during the course of the case and then  
5 substitute images for those exhibits when they go back to the  
6 jury.

7                   THE COURT: That is a standard practice. Any  
8 objection, Ms. Rucker-Brooks?

9                   MS. RUCKER-BROOKS: No, Your Honor.

10                  THE COURT: Ms. Howells?

11                  MS. HOWELLS: No, Your Honor.

12                  THE COURT: Thank you.

13                  MR. LASHER: We will have one witness, cooperating  
14 witness, Nicolas Cazares-Garcia, who will need a Spanish  
15 interpreter. We have contracted with a gentleman named Sam  
16 Ramos to provide that service. I understand that he has not  
17 only worked with our witnesses in preparation for this case  
18 but also with at least one of the defense witnesses. I  
19 believe that there is a stipulation to his acceptability as  
20 providing that service.

21                  THE COURT: Is that correct, Ms. Rucker-Brooks?

22                  MS. RUCKER-BROOKS: That is correct, Your Honor.

23                  THE COURT: Thank you. Ms. Howells?

24                  MS. HOWELLS: That is correct, Your Honor.

25                  THE COURT: Thank you.

1 morning, and welcome back, ladies and gentlemen. I hope  
2 nobody had to drive through snow. It was a little snowy  
3 earlier today, wasn't it?

4 Anybody talk to you about this case, or have you  
5 talked to anyone about this case? Please raise your hand, if  
6 so. Thank you. We will show no one raised their hand. We  
7 are continuing with the Government's presentation of evidence.  
8 Mr. Vaughn?

9 MR. VAUGHN: Thank you. The Government calls Miguel  
10 Barragan-Lopez.

11 THE COURT: And, sir, I need to swear you in. Can  
12 you raise your right hand?

13 (Witness sworn.)

14 THE COURT: Would you tell the jury your first name  
15 and last name and spell them both.

16 Just a minute, please.

17 INTERPRETER CONDE-BARWISE: Excuse me, Your Honor.  
18 If we are going to be doing consecutive, could the interpreter  
19 have -- speak a little louder so the Defendant can hear the  
20 Spanish as it is interpreted?

21 THE COURT: He will.

22 INTERPRETER RAMOS: It is on now.

23 THE COURT: Go ahead, please.

24 THE WITNESS: Miguel Barragan-Lopez.

25 THE COURT: Can you spell the last name, please?

1                   THE WITNESS: Barragan, B-A-R-R-A-G-A-N.

2                   THE COURT: Thank you. Go ahead, please.

3                   Question. Do I need to swear in Mr. Ramos?

4                   MR. VAUGHN: Yes.

5                   (SAMUEL RAMOS sworn to interpret Spanish into  
6 English.)

7                   THE COURT: Thank you. Go ahead, please.

8                   MR. VAUGHN: Your Honor, if there are no issues with  
9 Mr. Ramos' qualifications, it will not be necessary for the  
10 Government to proceed with any qualifications on his abilities  
11 to translate for this Court.

12                  THE COURT: My understanding is there are no issues;  
13 is that correct, Ms. Rucker-Brooks?

14                  MS. RUCKER-BROOKS: Absolutely. We agree to have  
15 Mr. Ramos.

16                  THE COURT: Okay, thank you. Mr. Ramos will serve as  
17 the Court's interpreter for this witness.

18                  MS. RUCKER-BROOKS: Thank you.

19                  MR. VAUGHN: Thank you.

20                  **MIGUEL BARRAGAN-LOPEZ, GOVERNMENT'S WITNESS, SWORN**

21                  **DIRECT EXAMINATION**

22 BY MR. VAUGHN:

23 Q    Mr. Barragan-Lopez, how old are you?

24 A    Twenty -- 37.

25 Q    In what country were you born?

1 with anybody else, and don't form or express an opinion until  
2 you have heard all the evidence, the arguments of the  
3 attorneys, and you have received the instructions from the  
4 Court. I will ask you to try to be back within 45 minutes. I  
5 don't know if you are aware.

6 The Court, in August and September, two of our judges  
7 passed away, and this afternoon there is a memorial service  
8 the Bar Association is conducting. They, among others, are  
9 being honored, and I need to attend as the Chief Judge. So we  
10 are going to be breaking a little after 3:00 today, so it will  
11 be a short afternoon. I would like to just cut lunch a little  
12 bit so we can get some more evidence in, all right? So we  
13 will see you at -- well, let's just say five until 1:00?  
14 Thank you.

15 THE CLERK: All rise.

16 (Jury out, 12:12 p.m.)

17 THE COURT: Counsel, same. Please be back like five  
18 of, please. Thank you.

19 (Lunch recess, 12:13 p.m.)

20 AFTER RECESS

21 **AFTERNOON SESSION**

22 (Jury out, 1:16 p.m., Defendant not present.)

23 THE COURT: Please be seated. We are on record and  
24 outside the presence of the jury. Mr. Pineda-Hernandez is not  
25 here yet. It is my understanding the parties wanted to

1 address something with the Court.

2 MR. VAUGHN: Yes, Your Honor.

3 THE COURT: Can we do this, Ms. Rucker-Brooks,  
4 without him here?

5 MR. VAUGHN: We should probably have him here.

6 THE COURT: Yes.

7 MS. RUCKER-BROOKS: We should probably wait, Your  
8 Honor. I believe they said he is on his way.

9 THE COURT: He is on his way.

10 THE CLERK: Here he is.

11 THE COURT: He is coming. Okay. Hello. How are  
12 you? You want to get his headset on, please.

13 THE CLERK: Yes. Sorry. It is charging.

14 THE COURT: All right. Go ahead, please, Mr. Vaughn.

15 MR. VAUGHN: During the break, Your Honor, counsel  
16 for Mr. Pineda-Hernandez and counsel for the Government were  
17 approached by the two court interpreters who informed the  
18 parties that the translations performed by Mr. Ramos  
19 throughout the course of the morning episode, they were  
20 replete with inaccuracies or not complete, were somewhat  
21 misleading. The parties had agreed to Mr. Ramos'  
22 qualifications.

23 THE COURT: Right.

24 MR. VAUGHN: I don't know where this puts us.

25 THE COURT: Okay.

1                   MR. VAUGHN: And I wanted to bring it to the Court's  
2 attention and because Mr. Ramos -- it would be the  
3 Government's intention, I believe the Defendant's intention,  
4 that he would continue to interpret for the questioning of  
5 Mr. Cazares-Garcia this afternoon. And if we are going to  
6 have two interpreters who are going to say that the  
7 interpretation that is going to the jury is not accurate, that  
8 the interpretation to the witness is not accurate, I don't  
9 know where it leaves us.

10                  THE COURT: Well, twice during the course of the, of  
11 the examination, the interpreter asked to approach. I think  
12 one was an error that he corrected, another one was an error  
13 on my part that I think some of us heard -- misheard, and  
14 Ms. Rucker-Brooks was correct that she had said  
15 methamphetamine and heroin.

16                  Anyway my assumption, therefore, was that when the  
17 interpreters heard an error they would bring it to the Court's  
18 attention, and they did in those two instances.  
19 Ms. Rucker-Brooks, do you want to respond?

20                  MS. RUCKER-BROOKS: Based on my conversation with  
21 them and when they spoke to Mr. Vaughn and Mr. Lasher and I,  
22 they said it was throughout and it was so great that they  
23 didn't want to continue but they wanted to bring it to our  
24 attention as soon as it was --

25                  THE COURT: Why was that done after the testimony was

1 over? I will ask them.

2 INTERPRETER SAMULOWITZ: Your Honor --

3 THE COURT: Can you please speak into the microphone?

4 INTERPRETER SAMULOWITZ: Oh, sure. Your Honor, most  
5 of the time the omissions were at the end of different  
6 sentences. If you -- the interpreters felt a lot of pressure.  
7 When we started noticing there, there were so many different  
8 -- differences in meaning that were not crucial, but they were  
9 different. They started to accumulate.

10 We started noticing omissions. Some of them, again,  
11 not that important. It didn't -- we didn't feel that it  
12 granted that we kept interrupting. The syntax, Your Honor,  
13 was so close to the English language that it -- not all the  
14 sentences made sense at one point or another in Spanish.

15 When we noticed great differences in meaning, we felt  
16 the need to interfere, but as interpreters at any level, state  
17 certified or federally certified, the first canon of our code  
18 of ethics is accuracy, Your Honor. And we are in a very  
19 difficult situation if we hear that there is so much  
20 happening. We don't know what to do. This was an interpreter  
21 hired by, by the U.S. Attorney's Office.

22 THE COURT: Yes. He is used frequently by both sides

23 --

24 INTERPRETER SAMULOWITZ: Exactly.

25 THE COURT: -- in criminal matters in our court.

1                   INTERPRETER SAMULOWITZ: Exactly. So now, there is a  
2 big difference, Your Honor, between a state certified and a  
3 federally certified interpreter because the level of  
4 difficulty is so, is so great that, that the command of both  
5 language -- of both languages varies when you are state  
6 certified and federally certified.

7                   The level at which you are tested when you are  
8 getting a state certification is very different than the one  
9 that you are tested when you get to obtain a --

10                  THE COURT: So what is your recommendation?

11                  INTERPRETER SAMULOWITZ: We would seriously recommend  
12 having a federally certified interpreter to interpret  
13 testimony. The command of the language --

14                  THE COURT: Can one of you do that, then?

15                  INTERPRETER SAMULOWITZ: We would rather, if you  
16 don't mind, Your Honor.

17                  THE COURT: Do you mind?

18                  MR. VAUGHN: No. No. No. That would be fine.

19                  THE COURT: Do you have any objection,  
20 Ms. Rucker-Brooks?

21                  MS. RUCKER-BROOKS: I have no objection, Your Honor.

22                  THE COURT: Since they were not actually interpreting  
23 for your client during the testimony because we had -- it took  
24 us a minute, but we got everybody mic'd. The other question  
25 is, do you want us to recall Mr. Barragan-Lopez to reexamine

1 him?

2 MS. RUCKER-BROOKS: If I can have a minute to speak  
3 to them about the inaccuracies because they have been -- I  
4 don't know they documented all of them.

5 THE COURT: All right.

6 MS. RUCKER-BROOKS: I asked them specifically, and  
7 they kind of gave a couple of examples for Mr. Vaughn and I  
8 but not a sit-down and let's go over it. She said something  
9 right before lunch. They left and went to lunch and when they  
10 came back, we spoke. But I don't know the detail of it, and I  
11 don't know how much they recorded. So if I can have a moment  
12 to do that.

13 THE COURT: Yes.

14 MS. RUCKER-BROOKS: Thank you.

15 THE COURT: Well, actually, given that this is not a  
16 communication. She can't give you legal advice, and so if she  
17 is going to give something, she needs to say it on the record  
18 as she is the Court's neutral so the Government can hear it as  
19 well. So go ahead, please.

20 INTERPRETER SAMULOWITZ: This interpreter, Claudia  
21 Rubio Samulowitz, did not document every single instance. I  
22 took -- this interpreter took notes at different points in  
23 time. But I don't have an example of every single time that  
24 this occurred.

25 THE COURT: Can you give us the examples that you

1 have so that the parties can make a decision about whether  
2 they should recall the witness.

3 INTERPRETER SAMULOWITZ: Yes, Your Honor.

4 THE CLERK: Should this witness be out of the room?

5 THE COURT: It doesn't matter.

6 INTERPRETER SAMULOWITZ: This interpreter made most,  
7 most of the notes, sort of to notes to self for, for purposes  
8 of -- for tactical purposes. This interpreter teaches classes  
9 and --

10 THE COURT: Please just give us the errors.

11 INTERPRETER SAMULOWITZ: So I can't give a lot of  
12 information, but one of the -- the better examples that I have  
13 is most of them are due to syntaxes, Your Honor. The example  
14 I gave to both counsel was, pertained to a question that was  
15 asked, when did he -- when did the Defendant get out of the  
16 car? And it was --

17 MS. RUCKER-BROOKS: Can you tell -- can you tell the  
18 Court who asked the question?

19 INTERPRETER SAMULOWITZ: I don't have it written. I  
20 didn't write it down.

21 MS. RUCKER-BROOKS: Okay. Thank you.

22 INTERPRETER SAMULOWITZ: The question was, "When did  
23 the Defendant get out of the car?" The translation should  
24 have, should have been "as soon as the car stopped," and it  
25 was something like, "as much as he could stand up." Which, if

1 you translate that into English it makes sense, but when you  
2 say it in Spanish, it doesn't.

3 That is the best example this interpreter can give at  
4 this point, but there were a lot of omissions, Your Honor,  
5 towards the end of every, of every question, of every answer  
6 back into English or questions into Spanish. There was -- it  
7 was obvious that the ability to retain the information for the  
8 whole question was not there because every question kept being  
9 interrupted to "chunk it," as we say.

10 THE COURT: Right.

11 INTERPRETER SAMULOWITZ: When you don't hear the  
12 whole question, Your Honor, as an interpreter, you may not  
13 give an accurate translation. Because you are, you are  
14 separating different segments. You are interpreting different  
15 segments, and by the end of the question, by the end -- now,  
16 by the time you finish interpreting the question, even though  
17 you interpret it correctly every segment, you may not have  
18 asked the correct question.

19 I don't know if this makes sense. Sometimes the  
20 first question in English, the first word in English is the  
21 last word in Spanish and vice versa. So we need, as  
22 interpreters, we need to hear the whole question before we  
23 start, and that is the reason why, when there is testimony we  
24 do consecutive because we need to hear the whole thing.

25 When we are doing simultaneous, Your Honor, we

1 have -- we lag behind to allow for that. That is called a  
2 "clash," and the longer we let the speaker go, the more  
3 context we have, the more material we have to work with. When  
4 we have the, the question and answer --

5 THE COURT: I understand what you are telling me.  
6 Can you have give me some more examples?

7 INTERPRETER SAMULOWITZ: Sadly, Your Honor, not  
8 specific examples.

9 THE COURT: Okay.

10 INTERPRETER SAMULOWITZ: But maybe my colleague has  
11 better documentation of what happened.

12 THE COURT: Thank you. Please make sure the  
13 microphone is -- so he can hear you. Thank you.

14 INTERPRETER CONDE-BARWISE: Yes, ma'am.

15 THE COURT: Thank you.

16 INTERPRETER CONDE-BARWISE: Yes, Your Honor. This  
17 interpreter noticed some of the same things that Ms. Claudia  
18 did, which is first of all the syntax. When interpreting from  
19 English into Spanish --

20 THE COURT: I understand what you are telling me that  
21 there is a syntax error. What I need to know is specific.  
22 Can you give me specific errors?

23 INTERPRETER CONDE-BARWISE: I have two examples of  
24 two mistranslations.

25 THE COURT: Okay.

1                   INTERPRETER CONDE-BARWISE: It was something about a  
2 question, and I think this part of the question was being  
3 asked by the U.S. Government. Something, whatever drugs that  
4 you received from Flaco through Grenas, kind of showing  
5 through whom. It was interpreted into Spanish to the witness  
6 that you received from Flaco or Grenas. It is just one  
7 example of numerous things that happened like that.

8                   THE COURT: Okay.

9                   INTERPRETER CONDE-BARWISE: Now second one is -- and  
10 this is more generic. I just made a note. When the  
11 U.S. -- the AUSA, Mr. Vaughn, was asking him about how the  
12 distribution process went or how they had different levels  
13 into distribution, distribution channel, I noticed that he  
14 omitted parts and that he was not clear in the end how the  
15 distribution was made.

16                   THE COURT: Okay. Well, then I think it is important  
17 that we recall him. I am just making that decision. So we  
18 will recall him. Is he still in the building?

19                   MR. VAUGHN: No. He is on his way back to Grayson.

20                   THE COURT: Well, he will have to be brought back  
21 tomorrow.

22                   MR. VAUGHN: Okay.

23                   THE COURT: Okay.

24                   MR. VAUGHN: Now, at that time --

25                   THE COURT REPORTER: I'm sorry. Microphone, please.

1                   MR. VAUGHN: I'm sorry. Now, at that time will the  
2 questioning be limited to those two questions?

3                   THE COURT: No. We -- I am going to get -- we are  
4 going to redo the testimony unless the Defendant objects.

5                   MS. RUCKER-BROOKS: I think it is a good idea to --

6                   THE COURT: I can't send this up with a piecemeal  
7 record.

8                   MS. RUCKER-BROOKS: Yeah.

9                   THE COURT: I mean, you can persuade me otherwise,  
10 but I don't see how, with the lack of specificity and the  
11 error and the generalized complaints about syntax, I think the  
12 only way to ensure the record is to redo his testimony in  
13 total.

14                  MR. VAUGHN: So my understanding is we have syntax  
15 errors, and I don't know what syntax is. But if that is  
16 something that -- my guess is, that is not going to be  
17 material.

18                  THE COURT: I don't know.

19                  MR. VAUGHN: I mean, I don't know what syntax is. I  
20 really don't.

21                  THE COURT: It may be a complete repetition of what  
22 happened today. What do you mean by syntax?

23                  INTERPRETER CONDE-BARWISE: This interpreter noticed  
24 that obviously the first language of this interpreter is  
25 English, second language is Spanish, in this interpreter's

1 opinion.

2 THE COURT: That is not true, but okay.

3 INTERPRETER CONDE-BARWISE: Better command.

4 THE COURT: Okay.

5 INTERPRETER CONDE-BARWISE: Better command.

6 Syntax -- with syntax we mean English has a way of structuring  
7 a sentence that is different than in Spanish. When  
8 interpreters are not too comfortable with the other language,  
9 in this case is Spanish. When their Spanish is not as good as  
10 English, and that is in this interpreter's opinion, what a  
11 person does is they stick very close to the syntax of English  
12 or a language.

13 There are two languages, A and B. For this  
14 interpreter, Spanish is my A language, and B is my -- in  
15 repeating, correcting that. Spanish is my A language, and  
16 English is my B language. It will always be. In this  
17 interpreter's opinion, these other colleagues, A language is  
18 English --

19 THE COURT: It is not true, but okay. All right.

20 INTERPRETER CONDE-BARWISE: Okay. He stuck very  
21 close to the syntax in English in the way of the structuring  
22 the sentences in Spanish, that along with the many omissions,  
23 in -- at the end of every question he omitted three or four  
24 words that sometimes were important, sometimes were not.  
25 Showed us that or lead us to believe that to a native speaker

1 of Spanish, it would not have made any sense what he was  
2 saying because he talks very close to the original language,  
3 which is English.

4           In Spanish, if a native speaker in Spanish who spoke  
5 no English would have not understood it at all. Maybe the  
6 reason the Defendant is understanding something is because he  
7 speaks English. But interpreter continuously -- this I want  
8 to say again. For every single question, at the end, he  
9 omitted two to three words.

10           THE COURT: Okay. Thank you.

11           INTERPRETER CONDE-BARWISE: You're welcome.

12           MR. VAUGHN: Judge, I wonder --

13           THE COURT: Go ahead.

14           MR. VAUGHN: I'm sorry. I wonder how much of this is  
15 simply a disagreement between two people who hear the same  
16 conversation and hear it differently.

17           THE COURT: I understand that, Mr. Vaughn, and we  
18 will never know. So the only way I can correct this record is  
19 to have him come back in and be examined again. It -- with  
20 what is before me now, it is the only solution I can think of  
21 that, without going line by line through the transcript -- it  
22 is the only way to ensure that Mr. Pineda-Hernandez's due  
23 process rights are honored.

24           MR. VAUGHN: Okay.

25           THE COURT: So we will let the marshal know that he

1 needs to be brought back. I don't know if they can turn the  
2 bus around, but if they can't, I don't know if there are other  
3 people on it. He will need to be on a bus for tomorrow.

4 MR. VAUGHN: No problem, Your Honor.

5 THE MARSHAL: I was in the process of checking to see  
6 if we could get him turned around. They are seeing how far  
7 out they are.

8 THE COURT: All right. We may just need to recall  
9 him.

10 MR. VAUGHN: I am sorry.

11 THE COURT: I mean, we will recall him.

12 MR. VAUGHN: Will the procedure be that his entire  
13 testimony for two and a half hours this morning is now  
14 stricken?

15 THE COURT: I, I am not striking it. I am just going  
16 to tell the jury the funny thing called the truth, that there  
17 was an issue about the translation, and so the court-appointed  
18 interpreters are going to interpret his testimony. And they  
19 can judge one way or the other. I don't know of any -- I  
20 can't put this -- the time that everyone has invested in this  
21 case, that is the only way that I can ensure that -- striking  
22 it, I guess I can strike it, but everybody just heard it. So  
23 it doesn't really make any sense to strike it, to me. So that  
24 is what we will do.

25 MR. VAUGHN: All right.

1                   THE COURT: Okay? So this afternoon -- we have got  
2 90 minutes. I guess we will just get started with  
3 Mr. Cazares-Garcia?

4                   MR. VAUGHN: No, we have --

5                   THE CLERK: Agent Steele.

6                   THE COURT: Is he 90 minutes?

7                   MR. VAUGHN: I am sorry. No. I switched. We have  
8 two, two law enforcement witnesses and then --

9                   MR. LASHER: Your Honor, if we began with  
10 Mr. Cazares-Garcia, we would probably get approximately an  
11 hour into testimony that I expect would be at least two. I am  
12 not sure --

13                  THE COURT: That is okay. We will start with him.

14                  MR. LASHER: He would need to be transported again  
15 tomorrow. DEA will make those arrangements.

16                  THE COURT: Okay. That is what we will do.

17                  THE CLERK: They can bring him back tomorrow. They  
18 are over an hour out right now.

19                  THE COURT: That is fine. Thank you, Ray.

20                  THE MARSHAL: No problem.

21                  THE COURT: Is that acceptable, Ms. Rucker-Brooks?

22                  MS. RUCKER-BROOKS: It is, but I am left with the  
23 problem if he needs to -- my client needs to communicate with  
24 someone up there.

25                  THE COURT: There won't be two of them up there.

1 MS. RUCKER-BROOKS: Okay.

2 THE COURT: It will just be one person.

3 MS. RUCKER-BROOKS: They said they work as a team.

4 INTERPRETER CONDE-BARWISE: If the interpreter may,  
5 everything will be said both in English and Spanish. We will  
6 not be able to be here if that was the case, that he needed to  
7 communicate -- I could come over here. We would prefer to  
8 work as a team. That is usually the practice between  
9 interpreters.

10 THE COURT: I have never had that before, but tell me  
11 what happens, what you are proposing.

12 INTERPRETER CONDE-BARWISE: If I understand  
13 correctly, you were saying you thought we were going to be --  
14 the two of us up there?

15 THE COURT: No. I want to know what you are  
16 proposing, the team approach you are proposing tomorrow.

17 INTERPRETER CONDE-BARWISE: Based on what I  
18 understood as she is concerned about who is interpreting for  
19 him, I was proposing the two us sit next to the witness so  
20 that we help each other in case one of them needs a word, to  
21 know a word, and we help each other or correct each other so  
22 that we don't have to interrupt Your Honor or any of the  
23 attorneys. We, we worked in the past before even for  
24 consecutive as a team. Two interpreters are sitting next to  
25 the witness to assist one another.

1                   THE COURT: Well, I think we will just have --

2                   INTERPRETER CONDE-BARWISE: Can you repeat your  
3 question? I am sorry.

4                   THE COURT: That just seems a little cumbersome. I  
5 don't understand why we need two people.

6                   Let me also say, so you are -- the other thing that  
7 is important to you is that the Government complete its entire  
8 question before any translation occurs.

9                   INTERPRETER CONDE-BARWISE: I am not sure I  
10 understand your question, Your Honor.

11                  THE COURT: I am just trying to get the procedure  
12 down. Mr. Vaughn was, I thought courteously pausing at times  
13 in his questions, same with Ms. Rucker-Brooks, pausing in  
14 order to give the interpreter an opportunity to translate.  
15 And you are, I am understanding, disapproving of that process?  
16 Your chunking was not a good idea?

17                  INTERPRETER CONDE-BARWISE: In the end -- you want to  
18 talk about that?

19                  INTERPRETER SAMULOWITZ: Your Honor, if the pauses  
20 are made by the attorney, that that is okay. What we noticed  
21 was that sometimes when Mr. Vaughn was speaking, Mr. Ramos  
22 would start speaking and cut him off to interpret that little  
23 bit. That may be a practice of Mr. Ramos. That, that, that  
24 makes sense, and sometimes it works but sometimes it doesn't  
25 when you interpret into, into Spanish.

1           The reason why we work as a team, Your Honor, either  
2 for consecutive or simultaneous is because sometimes -- it is  
3 really to stay accurate. Sometimes every time that there is a  
4 number, for instance, both interpreters write the number just  
5 to make sure that we are on the same page.

6           If there is a problem with, with a word, sometimes  
7 because both interpreters are hearing the question in English,  
8 if there is a term that is difficult, sometimes just a look to  
9 your, to your partner is enough for the partner to write down  
10 the number that he or she thinks you need in context.

11           THE COURT: All right. Let's go back to  
12 Ms. Rucker-Brooks' question. So you will have an opportunity  
13 to confer with your client when the testimony is over.

14           MS. RUCKER-BROOKS: So they will leave the stand and  
15 then come over here?

16           THE COURT: Yes. Somebody will have to.

17           INTERPRETER SAMULOWITZ: Yes, Your Honor, the person  
18 who is not at the mic, if needed, would come back and help, of  
19 course.

20           MS. RUCKER-BROOKS: Okay. I am just trying to  
21 understand their process.

22           THE COURT: Me too.

23           MS. RUCKER-BROOKS: It sounds like they both are  
24 focusing on --

25           THE COURT: I don't really know that I have room for

1 you, a marshal, the witness, for two of you to be up here  
2 because the marshal has to be right here. These people are in  
3 custody.

4 INTERPRETER SAMULOWITZ: I understand, Your Honor.

5 Well, that is the way we work. I apologize --

6 THE COURT: If you want to sit behind the court  
7 reporter so you can make eye contact with each other, that is  
8 fine. That is helpful.

9 INTERPRETER SAMULOWITZ: Whatever works for the  
10 Court.

11 THE COURT: I think we will do it that way.

12 INTERPRETER SAMULOWITZ: However we can accommodate.

13 THE COURT: Okay. Somebody should be at the table  
14 there also.

15 MS. RUCKER-BROOKS: But it sounds like if they are at  
16 the table, it is for the benefit of each other and not, like,  
17 if he is trying to communicate something to me.

18 THE COURT: Well, they weren't helping him during the  
19 examination in the first place today.

20 MS. RUCKER-BROOKS: Yes, they have been.

21 THE COURT: Someone will be there.

22 MS. RUCKER-BROOKS: They have been writing notes and  
23 handing them off while testimony has been going on.

24 THE COURT: Writing notes to who?

25 MS. RUCKER-BROOKS: Like, if he writes a note, and

1 they write in English and they hand it back to me.

2 THE COURT: Okay.

3 INTERPRETER CONDE-BARWISE: If this interpreter may.  
4 It is not for benefit -- my apologies. We also want to help  
5 you, but our ultimate goal is to be impartial. We don't try  
6 specifically --

7 THE COURT: You are here --

8 INTERPRETER CONDE-BARWISE: Right. We are here to  
9 preserve the record, and the ultimate goal is accuracy.

10 THE COURT: Yes.

11 INTERPRETER CONDE-BARWISE: That is our only  
12 obligation, to make sure -- our main obligation and probably  
13 the most important, the accuracy.

14 MR. VAUGHN: Your Honor? I am sorry, but I  
15 don't -- I, I should know this by now, but I don't. I don't  
16 know how these interpreters were selected, how we are here. I  
17 have never seen a situation this bizarre in -- and I have been  
18 practicing law for over 30 years as a prosecutor.

19 I started out in Miami, Florida, where everyone spoke  
20 Spanish. It was interpreter city. I have never seen a  
21 situation like this where they are basically saying they need  
22 four interpreters in a trial.

23 THE COURT: Right. It is not happening.

24 MR. VAUGHN: This is bizarre.

25 THE COURT: Okay. So there will be one interpreter

1 here for the witness doing what Mr. Ramos did today, and then  
2 one will remain at counsel table. They are federally  
3 certified interpreters so and if that is too taxing, let us  
4 know and we will try to get another interpreter.

5 INTERPRETER CONDE-BARWISE: Thank you.

6 INTERPRETER SAMULOWITZ: Thank you, Your Honor.

7 THE COURT: Can that work, then? You can say no. If  
8 the answer is no, tell me.

9 INTERPRETER SAMULOWITZ: I don't know until it stops  
10 working, Your Honor. We will do our best. If it doesn't  
11 work, we will let you know.

12 MR. VAUGHN: I am sorry, and then we are right back  
13 in a situation where we are going to be calling Barragan-Lopez  
14 back for time number three?

15 THE COURT: No. We are not doing that. We are  
16 arranging for another interpreter to be here.

17 MS. RUCKER-BROOKS: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. LASHER: I apologize, Your Honor, but if I may,  
20 does that mean that we won't be able to put Mr. Cazares-Garcia  
21 on the stand this afternoon?

22 THE COURT: Probably so.

23 MR. LASHER: Okay.

24 THE COURT: Can she be here in the afternoon?

25 THE CLERK: That is what I am trying to find out.

1                   THE COURT: So let's get Agent Steele on and off,  
2 Mike Cline on and off. Can we do that?

3                   MS. RUCKER-BROOKS: I apologize, Your Honor, but I  
4 don't think they have been interpreting everything that has  
5 been happening with my client. So can I just explain to him  
6 what all just took place?

7                   THE COURT: I thought somebody was interpreting the  
8 whole time.

9                   MS. RUCKER-BROOKS: You were interpreting all of  
10 this?

11                  INTERPRETER SAMULOWITZ: When this interpreter  
12 started speaking, of course, we stopped interpreting  
13 simultaneously, Your Honor. I don't know what happened  
14 behind.

15                  THE COURT: Yes. You may have a moment.

16                  MS. RUCKER-BROOKS: Thank you.

17                  INTERPRETER SAMULOWITZ: And if this interpreter may,  
18 Your Honor? We, we -- we can try to interpret this --

19                  THE COURT: I -- you have made a record now that  
20 makes it difficult for me to accept a proposal that you said  
21 is unacceptable even though it is a proposal that I have never  
22 seen before, so we are going to -- you have made a record that  
23 makes it difficult for me to accept that. So I am going to  
24 try to arrange for somebody else to be here tomorrow.

25                  INTERPRETER SAMULOWITZ: Okay. Thank you, Your

1 Honor.

2 THE COURT: Thank you.

3 THE CLERK: Should I bring in the jury?

4 THE COURT: No. She is talking to her client.

5 THE CLERK: Oh, sorry.

6 MS. RUCKER-BROOKS: We are ready. Thank you, Your  
7 Honor.

8 MR. VAUGHN: I am sorry, Your Honor, if I can put one  
9 more thing on the record. Now, at the same time  
10 Mr. Pineda-Hernandez can go on the record and waive any  
11 objections that he may have to any purported translation  
12 errors, realizing that the jury is going to hear the testimony  
13 twice now --

14 THE COURT: Correct.

15 MR. VAUGHN: -- from Mr. Barragan-Lopez now. So if  
16 he wants to factor that in, then he can make an informed  
17 waiver on the record freely and voluntarily that, that waives  
18 any objection to any translation errors that may have taken  
19 place.

20 THE COURT: Ms. Rucker-Brooks, do you want to confer  
21 with your client about that?

22 MS. RUCKER-BROOKS: Sure, Your Honor. Thank you.

23 THE COURT: Thank you.

24 MR. LASHER: Your Honor, while they are conferring,  
25 can I work on the equipment, get ready for the jury?

1                   THE COURT: You bet. Thank you very much for  
2 thinking of that.

3                   MS. RUCKER-BROOKS: Your Honor, if I may.

4                   THE COURT: Yes.

5                   MS. RUCKER-BROOKS: He does not waive any translation  
6 errors. He would like for the witness to come back tomorrow.

7                   THE COURT: Okay. The witness will come back.

8                   Let me just say one more thing to the interpreters.  
9 I was of the impression that any errors that you had perceived  
10 were being brought to the Court's attention as happened a few  
11 times. Now that we find out that is not the case and these  
12 other concerns were addressed with counsel before they were  
13 addressed with the Court and after the witness has been  
14 allowed to leave the building so it really creates an  
15 inconvenience. So I would ask that you please, in the future,  
16 let the Court know as soon as you discern a problem.

17                  INTERPRETER SAMULOWITZ: Yes, Your Honor. We  
18 mentioned it much earlier, and it was not brought up. Before  
19 we even approached the Court, Your Honor, I think that we  
20 mentioned that earlier. I, I really --

21                  THE COURT: To whom?

22                  INTERPRETER SAMULOWITZ: To Ms. Brooks.

23                  THE COURT: You told me twice that you want to be  
24 considered neutral, which means your obligation is to me.

25                  INTERPRETER SAMULOWITZ: Yes, Your Honor.

1                   THE COURT: So I have to be notified. That is what I  
2 am asking.

3                   INTERPRETER SAMULOWITZ: Yes, Your Honor. We just  
4 thought it would be more appropriate going by that channel.  
5 That is all.

6                   THE COURT: Thank you.

7                   MS. RUCKER-BROOKS: I just wanted to make a record  
8 that one of the U.S. Attorneys had already left because things  
9 were kind of dispersing, and I said, we should wait until  
10 everybody can be here and the judge. It is not like there was  
11 any conversation that I had with them.

12                  THE COURT: Okay.

13                  MS. RUCKER-BROOKS: She brought it up --

14                  THE CLERK: All rise.

15                  THE COURT: Thank you.

16                  (Jury in, 1:50 p.m.)

17                  (Witness sworn.)

18                  THE COURT: Please tell the jury, if you would, your  
19 first and last names and spell them both.

20                  THE WITNESS: Kevin, K-E-V-I-N. S-T-E-E-L-E, Kevin  
21 Steele.

22                  THE COURT: Go ahead, please.

23                  MR. LASHER: Thank you, Your Honor.

24

25

1 (Jury out, 2:38 p.m.)

2 THE COURT: Thank you. Anything else we want to  
3 address before tomorrow?

4 MR. VAUGHN: Besides the fact that I am absolutely  
5 stunned. Anyway, there we go.

6 THE COURT: All right, thank you. Anything,  
7 Ms. Rucker-Brooks?

8 MS. RUCKER-BROOKS: No, Your Honor.

9 THE COURT: I just want to confirm for the record  
10 that you have no objection to the process the Court has  
11 outlined where we will recall the witness and have one of the  
12 Court interpreters serve as the interpreter?

13 MS. RUCKER-BROOKS: No objection, Your Honor.

14 THE COURT: By "the witness," I mean Miguel  
15 Barragan-Lopez.

16 MS. RUCKER-BROOKS: That's correct, Your Honor. No  
17 objection.

18 THE COURT: All right. Thank you.

19 MS. RUCKER-BROOKS: Thank you.

20 THE COURT: Ladies, can you tell me in what judge's  
21 court in our building that you have team interpreted before  
22 in the sense of providing interpretation for witness's  
23 testimony with two interpreters being there? What other  
24 judges have authorized that? I am trying to negotiate with  
25 the clerk's office for that type of reimbursement. So what

1 other judges have you done that for?

2                   INTERPRETER CONDE-BARWISE: Your Honor, this is  
3 Interpreter Maria Conde-Barwise, has only participated in one  
4 trial with Judge Walton Pratt. At that time I worked with  
5 Miss Christina Courtright, and there were no witnesses at that  
6 time that needed any Spanish interpreting. So we just sat in  
7 the back and kept quiet the whole time interpreting, quietly  
8 team interpreting. We helped each other but only that  
9 interpreting in the simultaneous mode. Other than that, this  
10 interpreter has only interpreted during pleas and sentencing  
11 --

12                   THE COURT: Yes.

13                   INTERPRETER CONDE-BARWISE: -- with you and other  
14 judges, Your Honor.

15                   THE COURT: Yes.

16                   INTERPRETER CONDE-BARWISE: That is all.

17                   THE COURT: Thank you. And the other interpreter?  
18 Make sure you are on the mic.

19                   INTERPRETER SAMULOWITZ: Your Honor, this interpreter  
20 cannot honestly remember when was the last time she worked on  
21 a jury trial in this particular building. So I could not  
22 honestly tell you, Your Honor.

23                   THE COURT: Okay. Can you tell me a judge in another  
24 district where this has happened where two people have served  
25 to interpret a witness's testimony?

1                   INTERPRETER SAMULOWITZ: Certainly, Your Honor. The  
2 last I remember was in Omaha, Nebraska. I can't remember,  
3 Your Honor. Usually this interpreter has worked for the court  
4 in the simultaneous mode, in general, in different courts all  
5 over the country. So but I distinctly remember Omaha,  
6 Nebraska as one of the times when this interpreter has worked  
7 as a team in consecutive mode.

8                   THE COURT: So when the two of you before said you  
9 worked as a team in consecutive mode, that wasn't --

10                  INTERPRETER SAMULOWITZ: With each other.

11                  THE COURT: -- wasn't with each other?

12                  INTERPRETER SAMULOWITZ: No, Your Honor.

13                  THE COURT: All right, thank you.

14                  INTERPRETER CONDE-BARWISE: Your Honor, if this  
15 interpreter may. We were together in that capacity in state  
16 court in Rensselaer, Indiana, Your Honor.

17                  THE COURT REPORTER: I'm sorry, where?

18                  INTERPRETER CONDE-BARWISE: In Rensselaer, Indiana.

19                  THE COURT: Okay. Thank you.

20                  INTERPRETER CONDE-BARWISE: And also in Lexington,  
21 Kentucky with Miss Marta Roller. The two of us helped  
22 interpret for several witnesses in Spanish, working as a team.

23                  THE COURT: Okay. Thank you.

24                  INTERPRETER CONDE-BARWISE: You're welcome, Your  
25 Honor.

1                   THE COURT: 8:30 again, everybody. Be here at 8:15.

2                   Ms. Wetzel will e-mail you copies of the proposed jury  
3                   instructions just so you can be taking a look at those, all  
4                   right? Thank you.

5                   MR. VAUGHN: Thank you, Your Honor.

6                   (Adjourned, 2:43 p.m.)

7                   - - -

8                   CERTIFICATE OF COURT REPORTER

9  
10                  I, Jean A. Knepley, hereby certify that the  
11                  foregoing is a true and correct transcript from reported  
12                  proceedings in the above-entitled matter.

13

14

15                  /S/ Jean A. Knepley                                   July 18, 2018  
16                  JEAN A. KNEPLEY, RDR/CRR/CRC/FCRR           Date  
17                  Official Court Reporter  
                        Southern District of Indiana  
                        Indianapolis Division

18

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*(In open court.)*

(Jury out, 8:41 a.m.)

THE COURT: We are on record outside the presence of the jury in Cause No. 1:15-cr-200. This is the case of the United States of America versus Alfonso Pineda-Hernandez.

Mr. Pineda-Hernandez is present with counsel, Ms. Rucker-Brooks. The Government is present by Assistant United States Attorneys Joe Vaughn and Matt Lasher. They are assisted by Special Agent Matt Holbrook with the DEA.

This matter is on before the Court for the fourth day of trial by jury. We are outside of presence of the jury at this time. Are there any matters to bring up before the jury comes in? Mr. Vaughn?

MR. VAUGHN: Yes, Your Honor. I have a number of matters I would like to address on the record pertaining to the events of yesterday afternoon. First of all, I will divide my comments into three basic sections:

First of all, the specific examples of purported erroneous translations which were cited by the two court translators yesterday, the Government would submit that in the context of the case, the sparse examples they were able to come up with are not material, in light of all the testimony and the evidence in the case.

And number two, one of the examples that was cited dealt with a question by Mr. Pineda-Hernandez's lawyer in

1 which there was a dispute whether the question concerned  
2 marijuana or methamphetamine and heroin. The Government's  
3 recollection is that the Government and the Court and the  
4 court translators heard the statement as -- I am sorry, and  
5 Mr. Barragan. It would be the witness, the Court, and Mr.  
6 Barragan's interpreter heard the question as being marijuana.  
7 The court reporter and the court translator heard it as  
8 methamphetamine and heroin. That is not a mistranslation.  
9 That is simply an example of people hearing different things  
10 at the same time from one conversation.

11 Number two, the unspecified allegations of widespread  
12 translation errors which have been alleged by the court  
13 translators have compromised the record in this case and have  
14 boxed this Court into a corner. Basically, this Court has two  
15 options:

16 Number one is to recall Mr. Barragan-Lopez and go  
17 back through his testimony again with a new interpreter.

18 Number two would be for Mr. Barragan-Lopez to waive  
19 any translation errors that may have occurred yesterday, and  
20 we proceed with the next witness and we stand on  
21 Mr. Barragan-Lopez's testimony as it was elicited yesterday.

22 Because this is such an unusual situation, the  
23 Government requests that this Court conduct a colloquy with  
24 the Defendant and discuss those options with him and confirm  
25 that his decision has been made freely and voluntarily and to

1 understand that should he not waive the translation errors,  
2 the jury will have heard Mr. Barragan-Lopez's testimony twice  
3 within a timespan of 24 hours. And I would submit that that  
4 testimony was less than favorable to the Defendant.

5 Number three. It is the Government's understanding  
6 that this Court is not making a finding that there were, in  
7 fact, translation errors committed by Mr. Ramos. The  
8 allegation has been made by the court translators that there  
9 were errors. Mr. Ramos has never been -- has not weighed in  
10 on the matter.

11 In fact, he was unable to hear the translations being  
12 made by the court translators to the Defendant. For all we  
13 know, Mr. Ramos would say that he got it exactly right, his  
14 translations were spot on, and the court translators are the  
15 ones who got it wrong.

16 Because of the state of the record based upon the  
17 court translator's allegations, it is my understanding that  
18 this Court is not going to make a finding over whether there,  
19 in fact, were any translation errors. It is not going  
20 to -- it is not going to make any finding on the validity of  
21 the translator's accusations, that this Court has two  
22 interests.

23 One is to protect Mr. Pineda-Hernandez's due process  
24 rights, and the second is to protect the record in this case.  
25 And in order to do so, this Court is proceeding with the

1 options of either a waiver by Mr. Pineda-Hernandez or a redo  
2 of Mr. Barragan-Lopez's testimony and is not making any  
3 factual findings regarding the accuracy of the translations.  
4 Thank you.

5 THE COURT: Thank you.

6 Do you wish to respond, Ms. Rucker-Brooks?

7 MS. RUCKER-BROOKS: No, Your Honor. If you want to  
8 question my client, I mean, it is certainly up to the Court.  
9 I did speak to my client yesterday regarding his options. I  
10 believe he fully understood it when I spoke to him, and as  
11 Your Honor is well aware, he has been pretty firm in not  
12 agreeing to anything.

13 THE COURT: Understood, not waiving any rights.

14 MS. RUCKER-BROOKS: That's correct, Your Honor.

15 THE COURT: So let's make sure. Mr.  
16 Pineda-Hernandez, a waiver in federal court -- let me just say  
17 two things. First of all, I agree with the Government's  
18 characterization of the position the Court is in at this time,  
19 and I also agree with -- or will affirm that the Court is  
20 making no finding that Mr. Ramos' testimony was -- or  
21 translation was inaccurate in this case.

22 As the parties noted yesterday and the Defense  
23 counsel agreed to his qualifications, the Court is familiar  
24 with him, and he has served both the defense in cases in the  
25 Court's experience and the Government. And so the Court is

1 not making any finding concerning Mr. Ramos.

2 The Court's decision that the calling -- recalling  
3 Mr. Barragan-Lopez is the best way to handle the situation is  
4 born of this thought process, and I would ask Mr.  
5 Pineda-Hernandez to listen carefully, which I am sure he is.

6 If Mr. Barragan-Lopez's testimony, as translated  
7 today is the same as his testimony was yesterday, we will have  
8 the best record possible as to the accuracy of yesterday's  
9 translation, and so the Court has proposed a, an instruction  
10 that I will give the jury this morning. I have reviewed it  
11 with counsel. We just hashed it out.

12 Mr. Barragan-Lopez -- or Mr. Pineda-Hernandez, one  
13 thing I wanted to emphasize is that when you waive or give up  
14 a right, you have to know what right you are giving up. So if  
15 you agree that Mr. Barragan-Lopez can testify again today, and  
16 that is the course that you want the Court to pursue, then, as  
17 the Government noted, the jury will hear his testimony twice.  
18 They won't hear anybody else's testimony twice. They will  
19 hear his testimony twice in a period of 24 hours.

20 By choosing to have that be how we proceed, which is  
21 fine, and we are ready to have that happen, by choosing to  
22 have him proceed to testify again, you are waiving any error  
23 in the fact that he will be testifying twice. You can't  
24 complain on appeal if you are convicted in this case that it  
25 was wrong for me to allow him to testify twice.

1           So if you want that to be the process, and your  
2 attorney has indicated that that is your choice, and that is  
3 fine if it is, understand that in doing so you are giving up  
4 any right to complain about him being called for a second  
5 time, should you be convicted and should you try to raise this  
6 issue on appeal.

7           So the choice that I am putting to you is, do you  
8 wish to simply proceed on the record with his testimony as it  
9 came in yesterday, or do you wish for him to be recalled and  
10 have his testimony interpreted with a different translator?  
11 And if you wish to speak with your attorney privately before  
12 answering, that is just fine.

13           MS. RUCKER-BROOKS: Tell the Court. You can --  
14 (Defendant speaking in Spanish.)

15           THE COURT: Thank you.

16           INTERPRETER CONDE-BARWISE: May the interpreter  
17 inquire real quick, Your Honor?

18           THE COURT: Yes.

19           MR. VAUGHN: Wait a minute. Your Honor, this is not  
20 a translation process. He just spoke for -- that was -- now  
21 they don't know what he said?

22           THE COURT: You know what he said?

23           INTERPRETER CONDE-BARWISE: I do, Your Honor, but the  
24 interpreter needs to clarify something.

25           THE COURT: Okay.

1                   INTERPRETER CONDE-BARWISE: Thank you. Your Honor,  
2 as we had mentioned yesterday, I have made the decision that I  
3 would like to hear the testimony of this Defendant one, once  
4 more -- of this witness, correction from the interpreter. And  
5 I would not like to waive any right to any appeal. And so I  
6 would like for that witness to testify today.

7                   THE COURT: All right. That is your choice, then.  
8 But let me clarify that by making that choice, you are waiving  
9 a right to complain on appeal that he testified two times if  
10 you should be convicted in the case; do you understand?

11                  INTERPRETER CONDE-BARWISE: Yes. That is -- I  
12 understand that, but can I say something else?

13                  THE COURT: Yes.

14                  (Defendant speaking in Spanish.)

15                  INTERPRETER CONDE-BARWISE: Your Honor, let me say it  
16 again. What I am saying, it was not my problem. It was not  
17 an issue for my attorney. I think this was an issue that came  
18 up that no one was planning for it to happen, and let me say  
19 this again, I do not want to waive my right. But let me say  
20 again -- let me say it again, you have the last word. Do as  
21 you deem fit. I would like for him to testify again.

22                  THE COURT: All right. He will testify again. Thank  
23 you.

24                  MR. VAUGHN: Thank you.

25                  THE COURT: I am just going to state on the record

1 what I will state to the jury since everyone is here.

2           Ladies and gentlemen, yesterday the parties agreed  
3 that Sam Ramos, the interpreter who translated during  
4 Mr. Barragan-Lopez's testimony was qualified to perform the  
5 translation. Following the conclusion of Mr. Barragan-Lopez's  
6 testimony, an issue was raised as to the accuracy of the  
7 translation. Because I am not fluent in Spanish, I cannot  
8 determine the issue myself.

9           Accordingly, the parties have agreed that  
10 Mr. Barragan-Lopez will testify again today using a different  
11 interpreter. I will instruct you further on this matter in  
12 the final jury instructions.

13           Is that instruction acceptable to the Government?

14           MR. VAUGHN: Yes, it is, Your Honor.

15           THE COURT: And to the Defendant?

16           MS. RUCKER-BROOKS: Yes, it is, Your Honor.

17           THE COURT: Thank you.

18           MS. RUCKER-BROOKS: Your Honor?

19           THE COURT: Yes.

20           MS. RUCKER-BROOKS: Before the jury comes in, I have  
21 an emergency. May I step out for one minute?

22           THE COURT: Yes.

23           MS. RUCKER-BROOKS: Thank you.

24           THE COURT: Whoever will get the translation needs to  
25 get mic'd. We will do it how we did yesterday with the

1 interpreter. Ms. Sanchez, I think these interpreters have  
2 indicated that they need to work as a team in providing the  
3 translation. So I would like you to remain at counsel table  
4 with the Defendant so that he can communicate with his client,  
5 all right -- his lawyer, I mean to say. You can bring them  
6 in.

7 I have one other housekeeping matter to take care of.  
8 Because of the issues yesterday we got a little bit off  
9 schedule. So if the Government -- the Government had done a  
10 great job predicting the timing for each of the days. How do  
11 you now see the case unfolding?

12 MR. LASHER: Your Honor, before I respond --

13 THE COURT: You know what? You are right. We will  
14 wait.

15 MR. LASHER: We need Ms. Rucker-Brooks.

16 THE COURT: We will wait.

17 I had asked Ms. Rucker-Brooks -- I forgot that you  
18 had left, and they didn't answer my question anyway. I asked  
19 the Government to outline the order of events to see when they  
20 predicted that the case would end. So I thought we would all  
21 want to know that. Go ahead, please, Mr. Lasher.

22 MR. LASHER: Your Honor, we expect to have four  
23 witnesses today, starting with Mr. Barragan-Lopez, followed by  
24 Mr. Nicolas Cazares-Garcia. Then that will probably take us  
25 to approximately lunch. After that, we would have Agent

1 Holbrook come up and testify again to interpret more  
2 intercepted communications, and then we would close with Eric  
3 Sills regarding Count II of the indictment.

4 THE COURT: Okay.

5 MR. LASHER: I predict that is going to be mid to  
6 late afternoon by the time we are done. That will finish the  
7 Government's case in chief, and then depending on what the  
8 defense chooses to do will determine where we go.

9 THE COURT: I realize you don't have to make a call  
10 right now. Do you anticipate putting on any evidence?

11 MS. RUCKER-BROOKS: There is a possibility, Your  
12 Honor.

13 THE COURT: Okay. All right. So that would be  
14 tomorrow morning anyway, but I would still anticipate that we  
15 would submit the case to the jury tomorrow, argue and instruct  
16 tomorrow. Everybody is ready for that, correct?

17 MR. LASHER: Yes, Your Honor.

18 MS. RUCKER-BROOKS: That is correct, Your Honor.

19 THE COURT: Thank you.

20 MS. RUCKER-BROOKS: Any evidence that the Defense  
21 puts on wouldn't take an hour --

22 THE COURT: Okay.

23 MS. RUCKER-BROOKS: -- at best, from our side.

24 THE COURT: Okay. Thank you.

25 As the Government has done, I would ask that you

1 confer with them so that they can be aware, as they have been  
2 aware.

3 MS. RUCKER-BROOKS: Absolutely. They have been an  
4 amazing communicator.

5 THE COURT: Thank you. All right. Are we ready for  
6 the jury, Mr. Vaughn?

7 MR. VAUGHN: Yes, we are.

8 THE COURT: Ms. Rucker-Brooks?

9 Ms. Sanchez, I need to swear you in.

10 (Interpreter Elizabeth Sanchez sworn.)

11 THE COURT: At this time the Court would note that  
12 Interpreter Elizabeth Sanchez is here interpreting for the  
13 Defendant, and the court-appointed interpreters will be  
14 interpreting for the witness. Thank you -- and counsel.

15 Mr. Barragan-Lopez, please make sure you speak into  
16 the microphone, okay?

17 THE WITNESS: Okay.

18 (Jury in, 9:03 a.m.)

19 THE COURT: Thank you. Please be seated. Welcome  
20 back, ladies and gentlemen. Good morning. Let me ask you as  
21 I have in the past, has anyone talked to you about this case,  
22 or have you talked to anyone about this case? If so please  
23 raise your hand. Okay.

24 Ladies and gentlemen, yesterday the parties' agreed  
25 that Sam Ramos, the interpreter who translated during

1 Mr. Barragan-Lopez's testimony, is qualified to perform the  
2 translation. Following the conclusion of Mr. Barragan-Lopez's  
3 testimony, an issue was raised as to the accuracy of the  
4 translation. Because I am not fluent in Spanish, I cannot  
5 determine the issue myself.

6 Accordingly, the parties have agreed that  
7 Mr. Barragan-Lopez will testify again today using a different  
8 interpreter. I will instruct you further on this matter in  
9 the final jury instructions. So sir, could you state your  
10 name for the record.

11 THE WITNESS: Miguel Barragan-Lopez.

12 THE COURT: And do you understand that you are still  
13 under oath?

14 THE WITNESS: Yes.

15 THE COURT: Go ahead, Mr. Vaughn.

16 **MIGUEL BARRAGAN-LOPEZ, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN**

17 **DIRECT EXAMINATION**

18 BY MR. VAUGHN:

19 Q Welcome back, Mr. Barragan.

20 A Thank you.

21 Q Have you seen the movie *Ground Hog Day*?

22 A No.

23 Q What we are going to do today is go back through the same  
24 testimony that we went through with you yesterday.

25 A Okay.

1 as evidence against the Defendant.

2 You may give these witnesses' testimony whatever  
3 weight you believe is appropriate, keeping in mind that you  
4 must consider that testimony with caution and great care.

5 Miguel Barragan-Lopez testified twice because an  
6 issue was raised as to the accuracy of the translation of his  
7 first testimony. You should not give any extra weight to  
8 Mr. Barragan's testimony because he testified twice.  
9 Mr. Barragan's testimony should be evaluated in accordance  
10 with these instructions.

11 It is within the lawful performance of the duty of  
12 the United States Attorney to enter into plea bargaining with  
13 any individual relating to his alleged involvement in criminal  
14 activity, to seek an indictment, and to decide whether to  
15 recommend a reduced sentence against a particular individual  
16 in exchange for that person's cooperation in the Government's  
17 investigation.

18 You have heard evidence that before the trial,  
19 witnesses made statements that may be inconsistent with the  
20 witnesses' testimony here in court. You may consider an  
21 inconsistent statement made before the trial to help you  
22 decide how believable a witness' testimony was here in court.

23 You have heard recorded conversations and seen video  
24 recordings. This is proper evidence that you should consider  
25 together with and in the same way you consider the other

## UNITED STATES DISTRICT COURT

Southern District of Indiana

UNITED STATES OF AMERICA

v.

ALFONSO PINEDA-HERNANDEZ  
A/K/A "FLACO"

## JUDGMENT IN A CRIMINAL CASE

Case Number: 1:15CR00200-001

USM Number: 13351-028

Doneaka Rucker-Brooks

Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count(s)

pleaded nolo contendere to count(s) which was accepted by the court.

was found guilty on count(s) 1 and 2 after a plea of not guilty

The defendant is adjudicated guilty of these offense(s):

<b>Title &amp; Section</b>	<b>Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
21§§ 841(a)(1) and 846	Conspiracy to Distribute 500 Grams or More of Methamphetamine Mixture	11/10/2015	1
18§1956(a)(1)(B)(i) and (h)	Conspiracy to Launder Monetary Instruments	11/10/2015	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) dismissed on the motion of the United States.

**IT IS 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.

5/23/2018

Date of Imposition of Sentence:



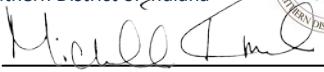
Hon. Jane Magnus-Stinson, Chief Judge  
United States District Court  
Southern District of Indiana

**A CERTIFIED TRUE COPY**

Laura A. Briggs, Clerk

U.S. District Court

Southern District of Indiana

By   
Deputy Clerk



Date: 5/25/2018

DEFENDANT: Alfonso Pineda-Hernandez, a/k/a "Flaco"

CASE NUMBER: 1:15CR00200-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **300 months. Ct 1: 300 months, Ct. 2: 240 months to be served concurrent.**

The Court makes the following recommendations to the Bureau of Prisons: Designation to Manchester, Kentucky, and if that is unavailable then Terre Haute, Indiana. Participation in substance abuse treatment and electrical and mechanical vocational programming.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant was delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

---

UNITED STATES MARSHALBY: \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Alfonso Pineda-Hernandez, a/k/a "Flaco"

CASE NUMBER: 1:15CR00200-001

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **5 years**. **Ct. 1: 5 years, Ct. 2: 3 years, concurrent.**

**MANDATORY CONDITIONS**

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic least two periodic drug tests thereafter, as determined by the court.
 

The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the conditions listed below.

**CONDITIONS OF SUPERVISION**

1. You shall surrender as directed to the U.S. Immigration and Customs Enforcement. If you are released from the custody of U.S. Immigration and Customs Enforcement for any reason, you shall report to the nearest U.S. Probation Office within 72 hours of your release.
2. If released from confinement, not deported or removed, or you re-enter the United States, you shall report to the nearest probation office within 72 hours.
3. You shall obtain the proper documentation from U.S. Immigration and Customs Enforcement authorizing you to work in the United States.

I understand that I and/or the probation officer may petition the Court to modify these conditions, and the final decision to modify these terms lies with the Court. If I believe these conditions are being enforced unreasonably, I may petition the Court for relief or clarification; however, I must comply with the directions of my probation officer unless or until the Court directs otherwise. Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the condition of supervision.

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

(Signed)

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

DEFENDANT: Alfonso Pineda-Hernandez, a/k/a "Flaco"

CASE NUMBER: 1:15CR00200-001

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

<u>Assessment</u>	<u>JVTA Assessment</u> <sup>1</sup>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>			
		\$200.00	

- The determination of restitution is deferred until. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss</u> <sup>2</sup>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>Totals</b>			

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution
  - the interest requirement for the  fine  restitution is modified as follows:

<sup>1</sup> Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

<sup>2</sup> Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Alfonso Pineda-Hernandez, a/k/a "Flaco"

CASE NUMBER: 1:15CR00200-001

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A**  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance with  C,  D,  E, or  F below; or
- B**  Payment to begin immediately (may be combined with  C,  D,  F or  G below); or
- C**  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D**  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E**  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F**  If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future. The victims' recovery is limited to the amount of loss, and the defendant's liability for restitution ceases if and when the victims receive full restitution.
- G**  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s): \_\_\_\_\_
- The defendant shall forfeit the defendant's interest in the following property to the United States:

## APPENDIX C

United States Code Annotated  
Constitution of the United States  
Annotated

Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

### U.S.C.A. Const. Amend. V

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy;  
Self-Incrimination; Due Process of Law; Takings without Just Compensation

#### Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V, USCA CONST Amend. V

Current through P.L. 116-142.

United States Code Annotated

Title 21. Food and Drugs (Refs & Annos)

Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)

Subchapter I. Control and Enforcement

Part D. Offenses and Penalties

21 U.S.C.A. § 841

§ 841. Prohibited acts A

Effective: December 21, 2018

Currentness

**(a) Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

**(1)** to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

**(2)** to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

**(b) Penalties**

Except as otherwise provided in [section 849](#), [859](#), [860](#), or [861](#) of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

**(1)(A)** In the case of a violation of subsection (a) of this section involving--

**(i)** 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

**(ii)** 5 kilograms or more of a mixture or substance containing a detectable amount of--

**(I)** coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

**(II)** cocaine, its salts, optical and geometric isomers, and salts of isomers;

**(III)** ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

**(IV)** any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

**(iii)** 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

**(iv)** 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

**(v)** 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

**(vi)** 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

**(vii)** 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

**(viii)** 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of [section 849](#), 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding [section 3583 of Title 18](#), any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

**(B)** In the case of a violation of subsection (a) of this section involving--

**(i)** 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding [section 3583 of Title 18](#), any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of

law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

**(C)** In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding [section 3583 of Title 18](#), any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

**(D)** In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Notwithstanding [section 3583 of Title 18](#), any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

**(E)(i)** Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$500,000 if the defendant is an individual or \$2,500,000 if the defendant is other than an individual, or both.

**(ii)** If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in [section 844](#) of this title and [section 3607 of Title 18](#).

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed--

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of Title 18;

(C) \$500,000 if the defendant is an individual; or

(D) \$1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use--

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with Title 18 or imprisoned not more than five years, or both.

**(7) Penalties for distribution**

**(A) In general**

Whoever, with intent to commit a crime of violence, as defined in [section 16 of Title 18](#) (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with Title 18.

**(B) Definition**

For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

**(c) Offenses involving listed chemicals**

Any person who knowingly or intentionally--

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of [section 830](#) of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with Title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

**(d) Boobytraps on Federal property; penalties; "boobytrap" defined**

**(1)** Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under Title 18, or both.

**(2)** If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under Title 18, or both.

**(3)** For the purposes of this subsection, the term “boobytrap” means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

**(e) Ten-year injunction as additional penalty**

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

**(f) Wrongful distribution or possession of listed chemicals**

**(1)** Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of [section 830](#) of this title) shall, except to the extent that paragraph (12), (13), or [\(14\) of section 842\(a\)](#) of this title applies, be fined under Title 18 or imprisoned not more than 5 years, or both.

**(2)** Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of [section 830](#) of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under Title 18 or imprisoned not more than one year, or both.

**(g) Internet sales of date rape drugs**

**(1)** Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that--

**(A)** the drug would be used in the commission of criminal sexual conduct; or

**(B)** the person is not an authorized purchaser;

shall be fined under this subchapter or imprisoned not more than 20 years, or both.

**(2)** As used in this subsection:

**(A)** The term “date rape drug” means--

- (i)** gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;
- (ii)** ketamine;
- (iii)** flunitrazepam; or
- (iv)** any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by [section 553 of Title 5](#), to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

**(B)** The term “authorized purchaser” means any of the following persons, provided such person has acquired the controlled substance in accordance with this chapter:

- (i)** A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A “qualifying medical relationship” means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health<sup>1</sup> professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.
- (ii)** Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.
- (iii)** A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any “date rape drug” for which a prescription is not required.

**(3)** The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this chapter.

**(h) Offenses involving dispensing of controlled substances by means of the Internet**

**(1) In general**

It shall be unlawful for any person to knowingly or intentionally--

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this subchapter; or

(B) aid or abet (as such terms are used in [section 2 of Title 18](#)) any activity described in subparagraph (A) that is not authorized by this subchapter.

**(2) Examples**

Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally--

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by [section 823\(f\)](#) of this title (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of [section 829\(e\)](#) of this title;

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections <sup>2</sup> 823(f) or 829(e) of this title;

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of [section 831](#) of this title.

**(3) Inapplicability**

(A) This subsection does not apply to--

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to--

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in [section 231 of Title 47](#)); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with [section 230\(c\) of Title 47](#) shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

#### **(4) Knowing or intentional violation**

Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

#### **CREDIT(S)**

([Pub.L. 91-513, Title II, § 401](#), Oct. 27, 1970, 84 Stat. 1260; [Pub.L. 95-633, Title II, § 201](#), Nov. 10, 1978, 92 Stat. 3774; [Pub.L. 96-359](#), § 8(c), Sept. 26, 1980, 94 Stat. 1194; [Pub.L. 98-473, Title II, §§ 224\(a\)](#), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; [Pub.L. 99-570, Title I, §§ 1002](#), 1003(a), 1004(a), 1005(a), 1103, Title XV, § 15005, Oct. 27, 1986, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192; [Pub.L. 100-690, Title VI, §§ 6055](#), 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318, 4367, 4371, 4378, 4381; [Pub.L. 101-647, Title X, § 1002\(e\)](#), Title XII, § 1202, Title XXXV, § 3599K, Nov. 29, 1990, 104 Stat. 4828, 4830, 4932; [Pub.L. 103-322, Title IX, § 90105\(a\), \(c\)](#), Title XVIII, § 180201(b)(2) (A), Sept. 13, 1994, 108 Stat. 1987, 1988, 2047; [Pub.L. 104-237, Title II, § 206\(a\)](#), Title III, § 302(a), Oct. 3, 1996, 110 Stat. 3103, 3105; [Pub.L. 104-305](#), § 2(a), (b)(1), Oct. 13, 1996, 110 Stat. 3807; [Pub.L. 105-277](#), Div. E, § 2(a), Oct. 21, 1998, 112 Stat. 2681-759; [Pub.L. 106-172](#), §§ 3(b)(1), 5(b), 9, Feb. 18, 2000, 114 Stat. 9, 10, 13; [Pub.L. 107-273](#), Div. B, Title III, § 3005(a), Title IV, § 4002(d)(2)(A), Nov. 2, 2002, 116 Stat. 1805, 1809; [Pub.L. 109-177, Title VII, §§ 711\(f\)\(1\)\(B\)](#), 732, Mar. 9, 2006, 120 Stat. 262, 270; [Pub.L. 109-248, Title II, § 201](#), July 27, 2006, 120 Stat. 611; [Pub.L. 110-425](#), § 3(e), (f), Oct. 15, 2008, 122 Stat. 4828, 4829; [Pub.L. 111-220](#), §§ 2(a), 4(a), Aug. 3, 2010, 124 Stat. 2372; [Pub.L. 115-391, Title IV, § 401\(a\) \(2\)](#), Dec. 21, 2018, 132 Stat. 5220.)

#### [Notes of Decisions \(8088\)](#)

#### **Footnotes**

<sup>1</sup> So in original. Probably should be “health”.

<sup>2</sup> So in original. Probably should be “section”.

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End of Document

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United States Code Annotated

Title 21. Food and Drugs (Refs & Annos)

Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)

Subchapter I. Control and Enforcement

Part D. Offenses and Penalties

21 U.S.C.A. § 846

§ 846. Attempt and conspiracy

Currentness

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

**CREDIT(S)**

(Pub.L. 91-513, Title II, § 406, Oct. 27, 1970, 84 Stat. 1265; Pub.L. 100-690, Title VI, § 6470(a), Nov. 18, 1988, 102 Stat. 4377.)

Notes of Decisions (3920)

21 U.S.C.A. § 846, 21 USCA § 846

Current through P.L. 116-142.

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United States Code Annotated

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 95. Racketeering (Refs & Annos)

18 U.S.C.A. § 1956

§ 1956. Laundering of monetary instruments

Effective: October 7, 2016

Currentness

**(a)(1)** Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

**(A)(i)** with the intent to promote the carrying on of specified unlawful activity; or

**(ii)** with intent to engage in conduct constituting a violation of [section 7201](#) or [7206 of the Internal Revenue Code](#) of 1986; or

**(B)** knowing that the transaction is designed in whole or in part--

**(i)** to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

**(ii)** to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

**(2)** Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

**(A)** with the intent to promote the carrying on of specified unlawful activity; or

**(B)** knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

**(i)** to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

**(ii)** to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

**(3)** Whoever, with the intent--

**(A)** to promote the carrying on of specified unlawful activity;

**(B)** to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

**(C)** to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

**(b) Penalties.--**

**(1) In general.**--Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or [section 1957](#), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of--

**(A)** the value of the property, funds, or monetary instruments involved in the transaction; or

**(B)** \$10,000.

**(2) Jurisdiction over foreign persons.**--For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and--

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

**(3) Court authority over assets.**--A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

**(4) Federal receiver.**--

(A) **In general.**--A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under [section 981](#) or [982](#), or a criminal sentence under [section 1957](#) or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) **Appointment and authority.**--A Federal Receiver described in subparagraph (A)--

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in [section 754 of title 28, United States Code](#); and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant--

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section--

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" includes--

(A) any financial institution, as defined in [section 5312\(a\)\(2\) of title 31, United States Code](#), or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in [section 1<sup>1</sup>](#) of the International Banking Act of 1978 ([12 U.S.C. 3101](#));

(7) the term "specified unlawful activity" means--

(A) any act or activity constituting an offense listed in [section 1961\(1\)](#) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving--

- (i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);
- (ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in [section 16](#));
- (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));<sup>2</sup>
- (iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;
- (v) smuggling or export control violations involving--
  - (I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act ([22 U.S.C. 2778](#)); or
  - (II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);
- (vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or
- (vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act ([21 U.S.C. 848](#));

(D) an offense under [section 32](#) (relating to the destruction of aircraft), [section 37](#) (relating to violence at international airports), [section 115](#) (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), [section 152](#) (relating to concealment of assets; false oaths and claims; bribery), [section 175c](#) (relating to the variola virus), [section 215](#) (relating to commissions or gifts for procuring loans), [section 351](#) (relating to congressional or Cabinet officer assassination), any of [sections 500](#) through [503](#) (relating to certain counterfeiting offenses), [section 513](#) (relating to securities of States and private entities), [section 541](#) (relating to goods falsely classified), [section 542](#) (relating to entry of goods by means of false statements), [section 545](#) (relating to smuggling goods into the United States), [section 549](#) (relating to removing goods from Customs custody), [section 554](#) (relating to smuggling goods from the United States), [section 555](#) (relating to border tunnels), [section 641](#) (relating to public money, property, or records), [section 656](#) (relating to theft, embezzlement, or misapplication by bank officer or employee), [section 657](#) (relating to lending, credit, and insurance institutions), [section 658](#) (relating to property mortgaged or pledged to farm credit agencies), [section 666](#) (relating to theft or bribery concerning programs receiving Federal funds), [section 793](#), [794](#), or [798](#) (relating to espionage), [section 831](#)

(relating to prohibited transactions involving nuclear materials), [section 844\(f\)](#) or [\(i\)](#) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), [section 875](#) (relating to interstate communications), [section 922\(l\)](#) (relating to the unlawful importation of firearms), [section 924\(n\)](#) (relating to firearms trafficking), [section 956](#) (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), [section 1005](#) (relating to fraudulent bank entries), [1006<sup>3</sup>](#) (relating to fraudulent Federal credit institution entries), [1007<sup>3</sup>](#) (relating to Federal Deposit Insurance transactions), [1014<sup>3</sup>](#) (relating to fraudulent loan or credit applications), [section 1030](#) (relating to computer fraud and abuse), [1032<sup>3</sup>](#) (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), [section 1111](#) (relating to murder), [section 1114](#) (relating to murder of United States law enforcement officials), [section 1116](#) (relating to murder of foreign officials, official guests, or internationally protected persons), [section 1201](#) (relating to kidnaping), [section 1203](#) (relating to hostage taking), [section 1361](#) (relating to willful injury of Government property), [section 1363](#) (relating to destruction of property within the special maritime and territorial jurisdiction), [section 1708](#) (theft from the mail), [section 1751](#) (relating to Presidential assassination), [section 2113](#) or [2114](#) (relating to bank and postal robbery and theft), [section 2252A](#) (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, [section 2260](#) (production of certain child pornography for importation into the United States), [section 2280](#) (relating to violence against maritime navigation), [section 2281](#) (relating to violence against maritime fixed platforms), [section 2319](#) (relating to copyright infringement), [section 2320](#) (relating to trafficking in counterfeit goods and services), [section 2332](#) (relating to terrorist acts abroad against United States nationals), [section 2332a](#) (relating to use of weapons of mass destruction), [section 2332b](#) (relating to international terrorist acts transcending national boundaries), [section 2332g](#) (relating to missile systems designed to destroy aircraft), [section 2332h](#) (relating to radiological dispersal devices), [section 2339A](#) or [2339B](#) (relating to providing material support to terrorists), [section 2339C](#) (relating to financing of terrorism), or [section 2339D](#) (relating to receiving military-type training from a foreign terrorist organization) of this title, [section 46502](#) of title 49, [United States Code](#), a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 ([19 U.S.C. 1590](#)) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), [section 38\(c\)](#) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 [[7 U.S.C.A. § 2024](#)] (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [[42 U.S.C.A. § 1490s\(a\)\(1\)](#)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, section 92 of the Atomic Energy Act of 1954 ([42 U.S.C. 2122](#)) (relating to prohibitions governing atomic weapons), or section 104(a) of the North Korea Sanctions Enforcement Act of 2016 (relating to prohibited activities with respect to North Korea);

## ENVIRONMENTAL CRIMES

**(E)** a felony violation of the Federal Water Pollution Control Act ([33 U.S.C. 1251 et seq.](#)), the Ocean Dumping Act ([33 U.S.C. 1401 et seq.](#)), the Act to Prevent Pollution from Ships ([33 U.S.C. 1901 et seq.](#)), the Safe Drinking Water Act ([42 U.S.C. 300f et seq.](#)), or the Resources Conservation and Recovery Act ([42 U.S.C. 6901 et seq.](#));

**(F)** any act or activity constituting an offense involving a Federal health care offense; or

**(G)** any act that is a criminal violation of subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1) of section 9(a) of the Endangered Species Act of 1973 ([16 U.S.C. 1538\(a\)\(1\)](#)), section 2203 of the African Elephant Conservation Act ([16 U.S.C. 4223](#)), or section 7(a) of the Rhinoceros and Tiger Conservation Act of 1994 ([16 U.S.C. 5305a\(a\)](#)), if the endangered

or threatened species of fish or wildlife, products, items, or substances involved in the violation and relevant conduct, as applicable, have a total value of more than \$10,000;

**(8)** the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

**(9)** the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

**(d)** Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

**(e)** Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

**(f)** There is extraterritorial jurisdiction over the conduct prohibited by this section if--

**(1)** the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

**(2)** the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

**(g) Notice of conviction of financial institutions.**--If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, [section 1957](#) or [1960](#) of this title, or [section 5322](#) or [5324 of title 31](#), the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

**(h)** Any person who conspires to commit any offense defined in this section or [section 1957](#) shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

**(i) Venue.**--**(1)** Except as provided in paragraph (2), a prosecution for an offense under this section or [section 1957](#) may be brought in--

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or [section 1957](#) may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

#### CREDIT(S)

(Added [Pub.L. 99-570](#), Title I, § 1352(a), Oct. 27, 1986, 100 Stat. 3207-18; amended [Pub.L. 100-690](#), Title VI, §§ 6183, 6465, 6466, 6469(a)(1), 6471(a), (b), Title VII, § 7031, Nov. 18, 1988, 102 Stat. 4354, 4375, 4377, 4378, 4398; [Pub.L. 101-647](#), Title I, §§ 105 to 108, Title XII, § 1205(j), Title XIV, §§ 1402, 1404, Title XXV, § 2506, Title XXXV, § 3557, Nov. 29, 1990, 104 Stat. 4791, 4792, 4831, 4835, 4862, 4927; [Pub.L. 102-550](#), Title XV, §§ 1504(c), 1524, 1526(a), 1527(a), 1530, 1531, 1534, 1536, Oct. 28, 1992, 106 Stat. 4055, 4064 to 4067; [Pub.L. 103-322](#), Title XXXII, § 320104(b), Title XXXIII, §§ 330008(2), 330011(l), 330012, 330019, 330021(1), Sept. 13, 1994, 108 Stat. 2111, 2142, 2145, 2146, 2149, 2150; [Pub.L. 103-325](#), Title IV, §§ 411(c)(2)(E), 413(c)(1), (d), Sept. 23, 1994, 108 Stat. 2253 to 2255; [Pub.L. 104-132](#), Title VII, § 726, Apr. 24, 1996, 110 Stat. 1301; [Pub.L. 104-191](#), Title II, § 246, Aug. 21, 1996, 110 Stat. 2018; [Pub.L. 104-294](#), Title VI, §§ 601(f)(6), 604(b)(38), Oct. 11, 1996, 110 Stat. 3499, 3509; [Pub.L. 106-569](#), Title VII, § 709(a), Dec. 27, 2000, 114 Stat. 3018; [Pub.L. 107-56](#), Title III, §§ 315, 317, 318, 376, Title VIII, § 805(b), Title X, § 1004, Oct. 26, 2001, 115 Stat. 308, 310, 311, 342, 378, 392; [Pub.L. 107-273](#), Div. B, Title IV, §§ 4002(a)(11), (b)(5), (c)(2), 4005(d)(1), (e), Nov. 2, 2002, 116 Stat. 1807, 1809, 1812, 1813; [Pub.L. 108-458](#), Title VI, § 6909, Dec. 17, 2004, 118 Stat. 3774; [Pub.L. 109-164](#), Title I, § 103(b), Jan. 10, 2006, 119 Stat. 3563; [Pub.L. 109-177](#), Title III, § 311(c), Title IV, §§ 403(b), (c)(1), 405, 406(a)(2), 409, Mar. 9, 2006, 120 Stat. 242 to 244, 246; [Pub.L. 110-234](#), Title IV, §§ 4002(b)(1)(B), (D), (2)(M), 4115(c)(1)(A)(i), (B)(ii), May 22, 2008, 122 Stat. 1096, 1097, 1109; [Pub.L. 110-246](#), § 4(a), Title IV, §§ 4002(b)(1)(B), (D), (2)(M), 4115(c)(1)(A)(i), (B)(ii), June 18, 2008, 122 Stat. 1664, 1857, 1858, 1870; [Pub.L. 110-358](#), Title II, § 202, Oct. 8, 2008, 122 Stat. 4003; [Pub.L. 111-21](#), § 2(f)(1), May 20, 2009, 123 Stat. 1618; [Pub.L. 112-127](#), § 6, June 5, 2012, 126 Stat. 371; [Pub.L. 114-122](#), Title I, § 105(c), Feb. 18, 2016, 130 Stat. 101; [Pub.L. 114-231](#), Title V, § 502, Oct. 7, 2016, 130 Stat. 956.)

#### Notes of Decisions (717)

#### Footnotes

1 So in original. Probably should read “[section 1\(b\)](#)”.

2 So in original. The second closing parenthesis probably should not appear.

**3** So in original. Probably should be preceded by “section”.

18 U.S.C.A. § 1956, 18 USCA § 1956

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