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IN THE  
SUPREME COURT OF THE UNITED STATES

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CESAR OCTAVIO ARMENTA LOPEZ,

*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 Eleventh Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

In light of the decision in *United States v. Haymond*, 139 S.Ct. 2369 (2019), recognizing fundamental Fifth and Sixth Amendment limits on the imposition and revocation of supervised release, did the district court's failure to afford petitioner an opportunity to be heard prior to adjudicating him guilty of supervised release violations as well as the court's failure to determine the adequacy of a factual basis for such an adjudication of guilt deprive petitioner of his constitutional rights?

## **INTERESTED PARTIES**

The are no parties interested in the proceeding other than those named in the caption of the appellate decision.

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# **PETITION FOR WRIT OF CERTIORARI**

Cesar Octavio Armenta-Lopez respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit, entered in case numbers 19-11497, 19-11509 in that court on July 8, 2020, *United States v. Armenta-Lopez*.

## **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit is contained in the Appendix (App. 1).

## **STATEMENT OF JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1255 and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on July 8, 2020. This petition is timely filed pursuant to SUP. CT. R. 13.1.

## **STATUTORY AND OTHER PROVISIONS INVOLVED**

Petitioner intends to rely upon the following constitutional and statutory provisions:

### **U.S. Const. amend. V (Due Process Clause):**

No person shall ... be deprived of life, liberty, or property, without due process of law . . . .

**U.S. Const. amend. VI** (right to jury trial in criminal cases):

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . .

### **STATEMENT OF THE CASE**

Petitioner Cesar Armenta Lopez was convicted in the Southern District of California in 2014 for two offenses: possessing methamphetamine on a vessel and possessing marijuana on a vessel, in violation of the Maritime Drug Law Enforcement Act (MDLEA). He was sentenced to concurrent 55-month terms of imprisonment and concurrent 5-year terms of supervised release. On June 29, 2018, after petitioner's release from prison and while on supervised release, petitioner and several other individuals were arrested by the U.S. Coast Guard while on a motorboat in international waters in the Pacific Ocean.

Based on this incident, which was unrelated to the offenses for which petitioner was then on supervised release, petitioner and six codefendants were charged on July 12, 2018, in an indictment returned in the Southern District of Florida, with two MDLEA violations consisting of conspiring to possess with intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States (Count One), in violation of 46 U.S.C. § 70506(b), and possessing with intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States (Count Two), in violation of 46 U.S.C. § 70503(a)(1) and 18 U.S.C. § 2.

On August 8, 2018, probation officers in the Southern District of California alleged that the petitioner had violated three conditions of his supervised release. The alleged violations were: (1) commission of a federal crime, i.e., the drug conspiracy offense alleged as Count One of the July 12, 2018 indictment returned in the Southern District of Florida; (2) commission of a federal crime, i.e., the substantive drug offense alleged as Count Two of the July 12, 2018 indictment returned in the Southern District of Florida; and (3) failure to report to his probation officer within 24 hours of reentering the United States. The probation officer alleged that the third offense occurred on or before June 28, 2018. Pursuant to these allegations, the probation officers petitioned the court in the Southern District of California for a bench warrant, and they recommended that Armenta Lopez's supervised release be revoked if he was found to be in violation of the conditions of his supervised release. The district court for the Southern District of California transferred jurisdiction over petitioner's supervised release to the Southern District of Florida, and the transfer was accepted.

At a district court hearing in the Southern District of Florida held April 4, 2019, the petitioner entered a guilty plea to the conspiracy offense charged in Count One of the Southern District of Florida indictment, following which he was sentenced to 168 months' imprisonment to be followed by five years' supervised release. Thereafter, the district court conducted a separate brief hearing on the revocation petition. *See* App. 28–29 (concluding the sentencing hearing and commencing the revocation hearing); *see also* U.S. C.A. Brief at 14 (“The district court held a sentencing hearing on the MDLEA conspiracy conviction and a separate revocation hearing.”). The district court initially

stated there were two alleged violations, “both stemming from the charge for which I have just sentenced Mr. Armenta Lopez.” App. 29. The district court asked defense counsel about petitioner’s position as to those two violations. Defense counsel predicted, “He is going to admit the violations and plead guilty.” *Id.* Without making any inquiry of petitioner and without hearing from him, the district court announced it was accepting petitioner’s “admission” of the first and second violations set out in the revocation petition. *Id.* On that basis the district court found petitioner guilty of violating his supervised release.

The prosecutor reminded the district court that a third violation had been alleged. In response, defense counsel stated, “Your Honor, that was the technical violation of his not reporting. I don’t know that he was in a position to report[,] but for purposes of this hearing we can resolve it.” *Id.* With no further discussion of the matter, the district court “amend[ed] its previous statement” and found Armenta Lopez had “admitted his guilt to the three violations of supervised release as set forth in the petition.” *Id.* The district court accepted those “admissions” and found Armenta Lopez was in violation of his supervised release. *Id.* No factual basis for any of the supervised release violations was presented, nor did the district court determine whether there existed any factual basis for the supervised release violations.

The district court then imposed a 12-month term of imprisonment, to be served consecutively to the 168-month sentence imposed for the Southern District of Florida conviction.

Petitioner appealed the revocation of his supervised release and his conviction for conspiracy to possess with intent to distribute cocaine on a vessel subject to the jurisdiction of the United States. The Eleventh Circuit consolidated the appeals. Petitioner challenged his conspiracy conviction on multiple grounds, including lack of subject matter jurisdiction given the absence of a requisite judicial finding, nor any record evidence, that the vessel the petitioner was on at the time of his arrest was subject to the jurisdiction of the United States under the provisions of the MDLEA. Petitioner's appeal of his supervised release revocation raised the same jurisdictional challenge and further challenged the district court's conclusion that petitioner had admitted to the supervised release violations and its failure to allow petitioner to address the court prior to imposing the revocation sentence. The Eleventh Circuit issued an opinion vacating the defendant's conspiracy conviction and remanding for judicial factfinding regarding whether the vessel was subject to the jurisdiction of the United States, but affirming the revocation of petitioner's supervised release.

#### **REASONS FOR GRANTING THE PETITION**

**The Fifth and Sixth Amendments guarantee that, before adjudicating an accused guilty of supervised release violations, a district court must provide the accused an opportunity to be heard personally and must find an independent factual basis for the alleged violations.**

The Eleventh Circuit's decision rejecting a petitioner's right to address the district court personally before an adjudication of guilt for alleged supervised release violations fails to comport with the fundamental requirement of due process and the

imperative for a finding of proof beyond a reasonable doubt of all facts essential to the imposition of punishment, as guaranteed by the Fifth and Sixth Amendments. This Court has recognized that supervised release, including any post-revocation sanctions, is a component of an accused's final sentence, and that a supervised release revocation proceeding is governed by the requirements of the Fifth and Sixth Amendments. *See United States v. Haymond*, 139 S.Ct. 2369, 2379–81 (2019). Moreover, the same procedural protections apply to revocation of supervised release proceedings as to parole revocation proceedings. *See id.* at 2391 (Alito, J., dissenting)(citing, *inter alia*, *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). *See also United States v. Copeland*, 20 F.3d 412, 414 (11th Cir. 1994) (“The same protections granted those facing revocation of parole are required for those facing the revocation of supervised release.”); *D'Amato v. United States Parole Commission*, 837 F.2d 72, 77 (2d Cir. 1988) (recognizing that supervised release hearings and parole revocation hearings have the same standard of relief for a due process violation).

In *Morrissey*, the Court recognized that the revocation of parole “inflicts a grievous loss on the parolee and often on others.” *Id.* at 482 (internal quotation marks omitted). Accordingly, the Court held that constitutional due process protections require the use of an orderly process for terminating a parolee’s liberty. *Id.* The Court listed “minimum requirements of due process” that apply in the context of a revocation hearing. *Id.* at 488–89. These requirements include the “opportunity to be heard in person.” *Id.* at 489.

The principles announced in *Haymond* and *Morrissey* apply with equal force to the revocation of supervised release. Pursuant to *Morrissey*, a defendant must be provided an opportunity to be heard in person before his supervised release is revoked, and certiorari is warranted to make clear this fundamental component of due process. Further, given the Court’s ruling in *Haymond*, the district court must find a factual basis to support the revocation of supervised release.

In the instant case, the petitioner was not afforded the opportunity to address the district court regarding the alleged supervised release violations before the district court adjudicated him guilty of all three alleged violations, nor was any factual basis presented to or found by the district court. With respect to two of the allegations, which related to criminal conduct, the district court asked defense counsel, “[W]hat is Mr. Armenta Lopez’s position with regard to these violations?” App. 29. Counsel answered, “He is going to admit the violations and plead guilty.” *Id.* The admission and plea anticipated by counsel never occurred. *Id.* Without affording petitioner an opportunity to speak, the district court immediately found him guilty of those two violations. *Id.*

With respect to the third allegation, which related to petitioner’s failure to report to his probation officer within 24 hours of entering the United States, defense counsel stated, “I don’t know that he was in a position to report but for purposes of this hearing we can resolve it.” App. 29. Again, without affording petitioner an opportunity to address the allegation, the district court found him guilty of that violation. *Id.*

Petitioner's right to due process was not satisfied by a hearing on the revocation motion, in which petitioner's attorney spoke on his behalf. Nor did it comport with due process that petitioner was allowed to speak in mitigation of sentence *after* the district court had adjudicated him guilty of the supervised release violations. Instead, due process required petitioner to be afforded an opportunity to speak prior to his adjudication of guilt, as supported by the unambiguous holding in *Morrissey v. Brewer*, 408 U.S. at 489: “[T]he minimum requirements of due process” include the “opportunity to be heard in person and to present witnesses and documentary evidence” (emphasis added). *Morrissey* thus establishes that the defendant's opportunity to address the court must precede the adjudication of guilt, where the Court in *Morrissey* linked the opportunity to be heard to the defendant's ability to “show, if he can, that he did not violate the conditions.” *Id.*, 408 U.S. at 488. Because petitioner was not afforded the opportunity to address the district court personally before his supervised release was revoked, he was deprived of his due process rights.

Additionally, in adjudicating petitioner guilty of the supervised release violation allegations, the district court made no finding of a factual basis to support the alleged violations. This lapse runs afoul of the established principle that “any increase in a defendant's authorized punishment contingent on the finding of a fact requires a jury and proof beyond a reasonable doubt *no matter what the government chooses to call the exercise.*” *Haymond*, 139 S.Ct. at 2379 (internal citations omitted; emphasis added).

Moreover, that the court of appeals found the record wanting as to the presence of essential subject matter jurisdiction with respect to petitioner's arrest, which led not

only to his conspiracy charge but also to the supervised release violation charges against him, confirms the prejudice arising from the deprivation of an opportunity for petitioner to address the court personally before the adjudication of his guilt and from the lack of a determination of an independent factual basis for the violations.

Accordingly, certiorari is warranted to clarify that a petitioner's Fifth and Sixth Amendment rights of due process and to proof beyond a reasonable doubt of every fact needed to establish punishment are violated when the district court adjudicates him guilty of multiple supervised release violations without first providing him an "opportunity to be heard in person," *Morrissey*, 408 U.S. at 489, and without finding a factual basis for the judgment of revocation, *Haymond*, 139 S.Ct. at 2388.

## **CONCLUSION**

For the foregoing reasons, the Court should grant the petition for a writ of certiorari and grant relief by remanding the case to the court of appeals to reconsider its opinion in light of the ruling in *United States v. Haymond*, 139 S.Ct. 2369 (2019).

Respectfully submitted,

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December 2020

## **APPENDIX**

## APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Armenta Lopez</i> , Nos. 19-11497, 19-11509 (July 11, 2020) . . . . .	App. 1
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Supervised release revocation hearing transcript, United States District Court, S.D. Fla., <i>United States v. Armenta Lopez</i> , No. 19-20017-TP-KMW (Apr. 8, 2019) . . . . .	App. 18

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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Nos. 19-11497, 19-11509  
Non-Argument Calendar

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D.C. Docket Nos. 1:18-cr-20602-KMW-7, 1:19-tp-20017-KMW-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CESAR OCTAVIO ARMENTA LOPEZ,

Defendant-Appellant.

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

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(July 8, 2020)

Before WILLIAM PRYOR, Chief Judge, MARTIN, and JILL PRYOR, Circuit  
Judges.

PER CURIAM:

In this consolidated appeal, Cesar Octavio Armenta Lopez (“Lopez”) appeals the revocation of his supervised release as well as his conviction for conspiracy to possess with intent to distribute cocaine on a vessel subject to the jurisdiction of the United States. Lopez says the district court did not have subject matter jurisdiction over his conspiracy charge because the record did not establish that the vessel he was on at the time of his arrest was subject to the jurisdiction of the United States. He also argues that the district court abused its discretion by revoking his supervised release without first allowing him to address the court, and by erroneously concluding that he admitted to the supervised release violations. After careful consideration, we vacate Lopez’s criminal conviction and remand for further proceedings consistent with this opinion. However, we affirm the revocation of Lopez’s supervised release.

## I.

Lopez and six codefendants were charged by a superseding indictment with violations of the Maritime Drug Law Enforcement Act (“MDLEA”) in the Southern District of Florida. Lopez was charged with conspiracy to possess with intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. § 70506(b) (Count 1), and possession with intent to distribute five kilograms or more of

cocaine while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. § 70503(a)(1) and 18 U.S.C. § 2 (Count 2).

Lopez pled guilty to Count 1 pursuant to a plea agreement. The factual proffer given with his plea agreement states that Lopez agreed to serve as a crewmember on a motorboat transporting cocaine from Colombia to Mexico. On June 28, 2018, Lopez was on a 30-foot-long open motor boat in the Pacific Ocean, along with six other men. The factual proffer states that the “boat had no hull numbers, registration in any country, or flag” and was “travelling in international waters.” On board the boat were bales containing over five kilos of cocaine. Shortly after midnight on June 28, a United States Coast Guard vessel approached the boat and ordered that it stop to be searched. The boat drove away evasively and at a high rate of speed, while crewmen threw the bales of cocaine overboard. Early in the morning, the motorboat came to a stop and all the men aboard, including Lopez, were taken into custody.

At the time of this arrest, Lopez was serving a five-year term of supervised release for an unrelated MDLEA conviction in the Southern District of California. In August 2018, the probation office for that district notified the court that Lopez committed three violations of the terms of his supervised release. Violations 1 and 2 alleged that Lopez committed “another federal, state or local crime,” and tracked the language of Counts 1 and 2 of the superseding indictment for each. Violation 3

alleged that Lopez failed to report to probation within 24 hours of reentering the United States “[o]n or before June 28, 2018.” Several months later, jurisdiction over the alleged supervised release violations was transferred to the Southern District of Florida.

At Lopez’s change-of-plea hearing in his criminal matter, the district court confirmed Lopez’s understanding of Count 1 of the superseding indictment. In explaining to Lopez the elements of this offense, the court stated that the government would have to prove beyond a reasonable doubt that Lopez entered into a conspiracy, and that “the object of this agreement was for each of the conspirators to possess a controlled substance, which in this case was more than five kilograms of cocaine, while onboard a vessel subject to the jurisdiction of the United States.” Lopez confirmed that he understood this. The court also asked Lopez whether the facts contained in the factual proffer were true, which Lopez confirmed. Apart from accepting the government’s factual proffer, the district court made no factual findings concerning Lopez’s offense.

In a single proceeding, the district court sentenced Lopez for his MDLEA conspiracy conviction and held a revocation hearing as to his supervised release violation. The court began the proceedings by addressing Lopez’s sentence for his MDLEA conspiracy conviction. The parties agreed that Lopez’s applicable Sentencing Guideline range for his conspiracy conviction was between 210- and

262-months imprisonment. However, Lopez's counsel stated Lopez "timely indicate[d] that he wanted to resolve his case by pleading guilty both to the underlying substantive case and the supervised release case." Therefore, the parties jointly recommended a below-Guideline total sentence of 180-months imprisonment, "which would include the underlying substantive case along with the supervised release violation." The parties' recommendation consisted of "168 months on the criminal case and an additional 12 months to run consecutive" for the supervised release violation. For his MDLEA conspiracy conviction in Count 1, the district court sentenced Lopez to 168-months imprisonment, along with a five-year term of supervised release.

The district court then turned to the revocation of Lopez's supervised release, and asked defense counsel to state Lopez's position as to the alleged violations. With respect to Violations 1 and 2, which tracked Counts 1 and 2 of Lopez's superseding indictment, defense counsel responded that "[Lopez] is going to admit the violations and plead guilty." With respect to the third violation, which alleged that Lopez failed to report within 24 hours of returning to the United States, defense counsel said, "I don't know that [Lopez] was in a position to report but for purposes of this hearing we can resolve it." On that basis, the district court found that "Mr. Armenta Lopez has admitted his guilt to the three violations of supervised release as set forth in the petition." Before announcing its sentence, the

district court offered Lopez an opportunity to address the court. Lopez responded by asking the court “for mercy.” The district court then sentenced Lopez to 12-months imprisonment for his supervised release violations, to be served consecutively to his 168-month sentence for MDLEA conspiracy.

## II.

The district court’s subject matter jurisdiction is a question of law that we review de novo, even when subject matter jurisdiction is challenged for the first time on appeal. United States v. Iguaran, 821 F.3d 1335, 1336 (11th Cir. 2016) (per curiam). A district court’s revocation of supervised release is generally reviewed for an abuse of discretion. United States v. Frazier, 26 F.3d 110, 112 (11th Cir. 1994). However, where an objection is raised for the first time on appeal, we review for plain error. United States v. Gresham, 325 F.3d 1262, 1265 (11th Cir. 2003). To prove plain error, a defendant must show: (1) error, (2) that is plain, (3) that affects his substantial rights; and (4) that seriously affected the fairness of the judicial proceedings. Id.

## III.

Lopez argues that his conviction under Count 1 must be vacated and reversed because the district court failed to make a preliminary finding of subject matter jurisdiction, as required under the MDLEA, 46 U.S.C. § 70504. He also argues that the district court’s failure to explain the MDLEA’s jurisdictional

requirement during his plea colloquy rendered his guilty plea unknowing and involuntary. Lopez correctly observes that the district court failed to make the required finding as to its jurisdiction, so we remand for limited factfinding on that issue. And since the court’s jurisdiction is a threshold issue, we do not reach Lopez’s argument concerning the validity of his plea at this time.

Under the MDLEA, it is a crime to “knowingly or intentionally . . . manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance” while on board “a vessel subject to the jurisdiction of the United States,” and to conspire to do the same. 46 U.S.C. §§ 70503(a)(1), (e)(1), and 70506(b). In 1996, Congress amended the MDLEA to clarify that “[j]urisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense.” Id. § 70504(a); United States v. Campbell, 743 F.3d 802, 805 (11th Cir. 2014). Rather, “[j]urisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.” 46 U.S.C. § 70504(a). This Court has “interpreted the ‘on board a vessel subject to the jurisdiction of the United States’ portion of the MDLEA as a congressionally imposed limit on courts’ subject matter jurisdiction, akin to the amount-in-controversy requirement contained in 28 U.S.C. § 1332.” Iguaran, 821 F.3d at 1336. Therefore, in order “for a district court to have adjudicatory authority over a charge that a defendant conspired to violate the substantive crime defined in the

MDLEA, the Government must preliminarily show that the conspiracy's vessel was, when apprehended, subject to the jurisdiction of the United States." Id. (alteration adopted) (quotation marks omitted).

The MDLEA's definition of a "vessel subject to the jurisdiction of the United States" includes, among other things, "a vessel without nationality." 46 U.S.C. § 70502(c)(1)(A).<sup>1</sup> A vessel without nationality includes (a) "a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed"; (b) "a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel"; and (c) "a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality." Id. § 70502(d)(1).

As the government concedes, there is nothing in Lopez's factual proffer, presentence investigation report, or plea hearing that establishes he was on board a vessel without nationality at the time of his arrest. See Br. of Appellee at 10. As a

<sup>1</sup> The MDLEA recognizes six categories of "vessel[s] subject to the jurisdiction of the United States." See 46 U.S.C. § 70502(c)(1). However, the parties agree that only one of the six categories applies here: "a vessel without nationality." See id. § 70502(c)(1)(A); Br. of Appellant at 12–14; Br. of Appellee at 9.

result, the record is insufficient to establish the district court's subject matter jurisdiction over the MDLEA offense in Count 1. It is the government's burden to show that a vessel is subject to the jurisdiction of the United States. See United States v. Tinoco, 304 F.3d 1088, 1114 (11th Cir. 2002). Thus, the government's failure to establish jurisdiction in the district court would ordinarily be grounds to dismiss the indictment. See, e.g., United States v. Guerro, 789 F. App'x 742, 750–51 (11th Cir. 2019) (unpublished). However, where the defendant's "failure to challenge the district court's jurisdiction is at least partially responsible for the lack of a developed record, we have said that the proper course of action is to remand the case to the district court for factual findings as to jurisdiction." Iguaran, 821 F.3d at 1338 (alteration adopted) (quotation marks omitted).

Lopez challenges the district court's jurisdiction over his MDLEA offense for the first time here on appeal. We therefore remand this matter to the district court to determine whether subject matter jurisdiction exists. On limited remand, the government should be given an opportunity to submit evidence supporting its assertion that Lopez's vessel was subject to the jurisdiction of the United States, and Lopez should be afforded an opportunity to present evidence that it was not. Id. If the government carries its burden of establishing that Lopez was on board a vessel subject to the jurisdiction of the United States when he was arrested, the

court should reinstate Lopez's conviction.<sup>2</sup> Id. If the court finds that the government has not proven jurisdiction, it should enter a judgment dismissing Count 1 for lack of jurisdiction. Id.

Lopez also says his plea agreement was invalid because the district court (a) failed to determine its jurisdiction prior to accepting Lopez's plea agreement; and (b) erroneously advised Lopez at his plea colloquy that the MDLEA's jurisdiction requirement was an element of his offense. Because the court's subject matter jurisdiction over Lopez's indictment is a threshold matter, we do not address Lopez's argument concerning the validity of his plea agreement at this time. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94–95, 118 S. Ct. 1003, 1012 (1998) (“The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception.” (alteration adopted) (quotation marks omitted)).

#### IV.

Lopez argues that his due process rights were violated when the district court failed to give him an opportunity to address the court personally before adjudicating him guilty of the supervised release violations. He also says the

<sup>2</sup> The government argues that, on remand, it need only prove facts establishing the district court's jurisdiction by a preponderance of the evidence. This Court has yet to decide “whether the government must establish the jurisdictional requirement beyond a reasonable doubt or by a preponderance of the evidence.” Tinoco, 304 F.3d at 1114 n.25. We decline to now opine on the proper standard of proof. Instead, we allow the district court to make that determination, if necessary, in the first instance.

district court erred in finding that he admitted to the supervised release violations.

Finally, Lopez says there was no factual basis for the district court to accept his guilty plea to Violation 3. None of these arguments warrant reversal under plain error review.<sup>3</sup>

Defendants in revocation proceedings are entitled to certain minimal due process requirements, which are incorporated in Federal Rule of Criminal Procedure 32.1. Frazier, 26 F.3d at 114. Relevant here, principles of due process require that a defendant facing a revocation of his supervised release has an “opportunity to be heard in person and to present witnesses and documentary evidence.” Morrissey v. Brewer, 408 U.S. 471, 489, 92 S. Ct. 2593, 2604 (1972); see also Fed. R. Crim. P. 32.1(b)(2)(E) (providing that the defendant is “entitled to . . . an opportunity to make a statement and present any information in mitigation”). In the context of a criminal guilty plea, Federal Rule of Criminal Procedure 11 requires a district court to “address the defendant personally in open court and inform the defendant of, and determine that the defendant understands[,] the nature of the charge to which the plea is offered and the potential consequences of that plea.” United States v. Lewis, 115 F.3d 1531, 1535 (11th Cir. 1997) (per curiam) (alteration adopted) (quotation marks omitted). However, this Court has

<sup>3</sup> Because Lopez raises these arguments for the first time on appeal, we review them for plain error. See Gresham, 325 F.3d at 1265.

held that Rule 11 does not apply in the context of revocation proceedings. See United States v. Johns, 625 F.2d 1175, 1176 (5th Cir. Unit B 1980).<sup>4</sup>

Lopez says he was not given an “opportunity to be heard in person” because the district court did not invite him to personally address the court prior to accepting his guilty plea. He argues that, under the Supreme Court’s decision in Morrissey, this is a violation of his due process rights. However, Lopez has not demonstrated that the district court plainly erred. Although Morrissey held that defendants have a due process right “to be heard in person” before the revocation of supervised release, nothing in that opinion suggests that an “opportunity to be heard” means an opportunity to personally address the court. See 408 U.S. at 489, 92 S. Ct. at 2604. Indeed, in Morrissey, the Court expressly declined to impose any rigid procedures that a court must follow before revoking a term of supervised release. Id. at 488, 92 S. Ct. at 2604 (declining to “write a code of procedure” for revocation hearings). And while Rule 11 does require the district court to address the defendant personally, Lewis, 115 F.3d at 1535, Rule 11 does not apply in revocation proceedings, Johns, 625 F.2d at 1176. Because no precedent of the Supreme Court or this Court “directly resolv[es]” Lopez’s challenge in his favor, the district court did not commit plain error. See United States v. Lejarde-Rada,

<sup>4</sup> In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc), this Court adopted as binding precedent all decisions of the Fifth Circuit handed down prior to the close of business on September 30, 1981. Id. at 1207.

319 F.3d 1288, 1291 (11th Cir. 2003) (per curiam) (holding that plain error does not exist when “the explicit language of a statute or rule does not specifically resolve an issue” and “there is no precedent from the Supreme Court or this Court directly resolving it”).

Lopez also argues that the district court plainly erred in “finding that [he] had admitted all three violations.” Br. of Appellant at 19. Lopez appears to argue the district court’s failure to elicit an express guilty plea from Lopez himself—as opposed to one communicated through counsel—constituted a due process violation. In United States v. Moriarty, 429 F.3d 1012 (11th Cir. 2005) (per curiam), this Court held in the context of a criminal guilty plea that a district court’s failure to elicit an “express declaration of [the defendant’s] guilty plea was not plain error” because nothing in the record “indicat[ed] that [the defendant] meant to plead other than guilty.” Id. at 1020. Here, Lopez plainly intended to plead guilty. During his revocation proceeding, defense counsel stated that Lopez “timely indicate[d] that he wanted to resolve his case by pleading guilty both to the underlying substantive case and the supervised release case.” (emphasis added). With respect to supervised release Violations 1 and 2, defense counsel stated that Lopez was “going to admit the violations and plead guilty.” And as to Violation 3, counsel stated that, “for purposes of [the revocation] hearing we can resolve it.” Nothing in the record suggests that Lopez did not intend to plead guilty. Indeed,

when given an opportunity to address the court personally, Lopez asked only for the court's mercy. On this basis, the district court reasonably concluded that Lopez intended to plead guilty to all three supervised release violations. See id. at 1019–20.

With respect to Violation 3, Lopez argues the district court plainly erred in accepting his guilty plea because the alleged violation was factually impossible. He points out that Violation 3 alleges he failed to report to the probation officer within 24 hours of his reentry into the United States “[o]n or before June 28, 2018.” However, the factual proffer signed by the parties in Lopez’s criminal matter states that he “was travelling in international waters” on June 28, 2018. Thus, according to Lopez, there was no factual basis for the court to accept his guilty plea. While there is some facial merit to Lopez’s challenge, we conclude Lopez invited any error on the part of the district court when he agreed to plead guilty to Violation 3. See United States v. Love, 449 F.3d 1154, 1157 (11th Cir. 2006) (per curiam) (holding that defendant induced error at sentencing hearing by conceding that the court could impose a term of supervised release). As a result, we are precluded from reviewing this argument on appeal.<sup>5</sup> United States v.

<sup>5</sup> In his reply brief, Lopez also says there was no basis to find him guilty of Violations 1 and 2, which alleged that he committed “another federal, state or local crime,” namely Counts 1 and 2 of the superseding indictment. He argues that, because the district court never established subject matter jurisdiction over Counts 1 and 2, those offenses did not constitute a “federal, state, or local crime,” and thus could not serve as a basis for his supervised release revocation. Because Lopez raises this issue for the first time in his reply brief, we do not consider it. See

Silvestri, 409 F.3d 1311, 1327 (11th Cir. 2005) (“Where invited error exists, it precludes a court from invoking the plain error rule and reversing.” (quotation marks omitted)).

**V.**

For these reasons, we **VACATE** Lopez’s MDLEA conspiracy conviction and **REMAND** for further proceedings consistent with this opinion. We **AFFIRM** the revocation of Lopez’s supervised release.

United States v. Whitesell, 314 F.3d 1251, 1256 (11th Cir. 2002) (per curiam) (stating that issues raised for the first time in a reply brief are waived).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 19-20017-TP-WILLIAMS

UNITED STATES OF AMERICA

Plaintiff,  
v.

CESAR OCTAVIO ARMENTA LOPEZ  
USM # 46177-298

Defendant.  
\_\_\_\_\_/

**JUDGMENT AND COMMITMENT  
UPON REVOCATION OF SUPERVISED RELEASE**

THIS MATTER came before the Court upon the United States Probation Office's Petition for Revocation of Supervised Release DE # 3. The Court held a final hearing on the Petition on April 8, 2019. The Defendant admitted to violations 1, 2, & 3. Accordingly, the Court accepted Defendant's admission and imposed the following sentence:

It is ORDERED AND ADJUDGED that Supervised Release is hereby REVOKED and TERMINATED and the Court sentences the Defendant to imprisonment for term of 12 months. This term of imprisonment shall run consecutive to the 168 month sentence given in case number 18-CR-20602-Williams. Defendant was advised of his right to appeal within 14 days.

**DONE AND ORDERED** in Chambers, at Miami, Florida this 10 day of

April 2019.

  
KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE

Copy to:  
Counsel of Record  
Sandra Italiano, USPO  
Bureau of Prisons / U.S. Marshal

10:32

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UNI TED STATES DI STRI CT COURT  
SOUTHERN DI STRI CT OF FLORIDA  
MIAMI DIVISION  
CASE NOS. 18-20602, 19-20017

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**UNITED STATES OF AMERICA**

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**vs.**

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CESAR OCTAVIO ARMENTA LOPEZ

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**Defendant**

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SENTENCING HEARING HELD 4-8-2019  
BEFORE THE HONORABLE KATHLEEN M. WILLIAMS  
UNI TED STATES DI STRI CT COURT JUDGE

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**APPEARANCES:**

8

FOR THE UNI TED STATES: FRANK TAMEN, A. U. S. A.  
99 N.E. 4th Street  
Miami, FL 33132

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FOR THE DEFENDANT: JASON KREISS, ESQ.  
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Fort Lauderdale, FL 33316

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REPORTED BY: PATRICIA SANDERS, RPR  
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1 COURTRoom DEPUTY: This Court calls Case No.  
2 18-20602-CR-WMS, United States of America versus Cesar Octavio  
3 Armenta Lopez.

4 Counsel, if you would please state your appearances  
5 for the record.

6 MR. TAMEN: Good afternoon, Your Honor, Frank Tamen on  
7 behalf of the United States.

8 THE COURT: Good morning, Mr. Tamen.

9 MR. KREISS: Good morning, Your Honor, Jason Kreiss on  
10 behalf of Mr. Armenta Lopez who is present and is ready to  
11 proceed.

12 THE COURT: Good morning, Mr. Kreiss and good morning,  
13 Mr. Armenta Lopez.

4 THE DEFENDANT: Good morning.

5 THE COURT: And if our two probation officers could  
6 announce their appearances.

7 MS. ITALIANO: Good morning, Your Honor, Sandra  
8 Italiano on behalf of U.S. Probation.

19 THE COURT: And you are here with regard to the  
20 presentence report; is that correct?

21 MS. ITALIANO: Yes, Your Honor.

22 THE COURT: All right.

23 MS. OKUN: Good morning, Your Honor, Tanya Okun on  
24 behalf of Probation.

THE COURT: And you are here with regard to the

08:40 1 supervised release violation?

08:40 2 MS. OKUN: Yes, Your Honor.

08:40 3 MR. KREISS: And, Your Honor, if I could have Mr.

08:40 4 Thomas Felasco sit with me at counsel table. He has been  
08:40 5 assisting me with translation throughout the case.

08:40 6 THE COURT: Of course. And good morning to you, Mr.  
08:40 7 Felasco.

08:40 8 MR. FELASCO: Good morning, Your Honor.

08:40 9 THE COURT: All right. We are here today for both  
08:40 10 sentencing in the substantive matter for Mr. Armenta Lopez as  
08:40 11 well as for the final revocation hearing as to his supervised  
08:40 12 release.

08:40 13 Let's start with the sentencing. I have received your  
08:41 14 objections to the presentence report. It was basically as to  
08:41 15 the date of arrest, which I know that Mr. Tamen and I have  
08:41 16 dealt with in the past, and then as to the captain designation.

08:42 17 But I will start first by asking, you Mr. Kreiss, have  
08:42 18 you reviewed the PSI and any addendums with your client?

08:42 19 MR. KREISS: I have, Your Honor; and Mr. Felasco has  
08:42 20 translated them from English to Spanish.

08:42 21 THE COURT: All right. Other than the arrest date are  
08:42 22 there any other factual matters that need to be addressed in  
08:42 23 the PSI?

08:42 24 MR. KREISS: No, Your Honor.

08:42 25 THE COURT: All right. Mr. Tamen, as to the arrest

08:42 1 date it is my understanding that in previous hearings with  
08:42 2 codefendants we all agreed that the BOP could start its  
08:43 3 calculation from the June 28th date; is that right?

08:43 4 MR. TAMEN: Yes. That is what the Court has entered on  
08:43 5 the judgments, that they should receive credit from that date;  
08:43 6 and the Government agrees with that.

08:43 7 THE COURT: So that resolves that issue.

08:43 8 MR. KREISS: Yes, Your Honor.

08:43 9 THE COURT: Let's turn to the guideline calculation.  
08:43 10 You had objected, Mr. Kreiss, to the two level increase for  
08:43 11 Mr. Armenta Lopez's status as captain or navigator.

08:43 12 MR. KREISS: That's correct, Your Honor.

08:44 13 THE COURT: And I believe your, position Mr. Tamen,  
08:44 14 was in this case everyone served that role at some point or  
08:44 15 another and therefore no one was distinct in that duty?

08:44 16 MR. TAMEN: That is basically correct, Your Honor. The  
08:44 17 defendant was given a GPS with points of navigation and with  
08:44 18 the meeting points already entered into it.

08:44 19 All he had to do was look at the screen and steer the  
08:44 20 boat. He did not have to navigate or plot a course. He was not  
08:44 21 in charge of anyone in the crew.

08:44 22 They were all waiting for the time to load or unload  
08:44 23 the cocaine. And it did not appear to rise to the level of a  
08:44 24 role adjustment, so I agree the two levels would probably  
08:45 25 overstate the significance of what he was doing in this case as

08:45 1 compared to the other defendants.

10:32 2 THE COURT: All right. While the Court understands why  
10:32 3 Probation had this initial calculation the Court will defer to  
10:32 4 the parties' knowledge of the roles of the persons involved  
10:32 5 here; most specifically Mr. Armenta Lopez.

10:32 6 So I will ask you take out the two level enhancement.  
10:32 7 That would bring the total offense level to 35. Mr. Armenta  
10:32 8 Lopez has a Criminal History Category 3, which would bring us  
10:32 9 to an advisory sentencing guideline range of I believe 210 to  
10:32 10 262.

10:32 11 MR. TAMEN: Yes, Your Honor.

10:32 12 THE COURT: With that, Mr. Kreiss, are there any other  
10:32 13 objections or corrections you believe need to be addressed in  
10:32 14 the PSI?

10:32 15 MR. KREISS: No, Your Honor.

10:32 16 THE COURT: Mr. Tamen, is there anything further on  
10:32 17 behalf of the United States?

10:32 18 MR. TAMEN: No, Your Honor.

10:32 19 THE COURT: The Court will adopt with those edits the  
10:32 20 PSI in its entirety, which calculates a total offense level 35,  
10:32 21 a Criminal History Category 3, with an advisory guideline range  
10:32 22 of 210 to 262 months.

10:32 23 I will hear from you now as to any 3553 presentation  
10:32 24 on behalf of Mr. Armenta Lopez.

10:32 25 MR. KREISS: Yes, Your Honor. The parties have a

10:32 1 joint recommendation -- if Your Honor is so inclined -- of a  
10:32 2 total of 188 months, which would include the underlying  
10:32 3 substantive case along with the supervised release violation.

10:32 4 THE COURT: Wow; great minds all over the world think  
10:32 5 alike.

10:32 6 MR. KREISS: And, Your Honor, obviously a sentence of  
10:32 7 188 months is still a tremendous amount of time.

10:32 8 I am bound, based upon my agreement with Mr. Tamen, to  
10:32 9 ask the Court to impose a sentence of 15 years, 188 months.

10:32 10 Obviously there is no excuse for what happened here,  
10:32 11 and Mr. Armenta Lopez accepts full and complete responsibility  
10:32 12 for his actions.

10:32 13 He did timely indicate that he wanted to resolve his  
10:32 14 case by pleading guilty both to the underlying substantive case  
10:32 15 and the supervised release case.

10:32 16 He was fully debriefed and has done everything that he  
10:32 17 could to essentially right the wrong that he has committed. I  
10:32 18 can't sit here and say he did not know what was going to happen  
10:32 19 since he got a break before.

10:32 20 But certainly a sentence of 188 months -- which is a  
10:32 21 variance from what the advisory guidelines would be -- it is  
10:32 22 certainly an adequate deterrent to others.

10:32 23 It will certainly safeguard the community from further  
10:32 24 offenses from Mr. Lopez. He is 45 years old and he will be  
10:32 25 released at around 60 years old.

10:32 1       And of course the rate of recidivism will drop based  
10:32 2 on his age alone. I don't stand here with an excuse, but it is  
10:32 3 the economic reality where he is from.

10:32 4       He had little to no education. He was a fisherman all  
10:32 5 of his life. He did do some fiberglass repair to supplement his  
11:29 6 income, which was about \$20 a day.

10:32 7       He obviously was out in this small Pangea hundreds of  
10:32 8 miles off shore in these very perilous conditions, where he of  
10:32 9 course should not have been, in an attempt to make more money.

10:32 10       He obviously took a risk and now he is going to pay  
10:32 11 the consequences, which are extreme, when you look at his  
10:32 12 history and the other case.

10:32 13       So I think, Your Honor, a total sentence of 188 months  
10:32 14 would promote respect for the law and be a deterrent to others  
10:32 15 in his community.

10:32 16       Because word of course does get back. So I think a  
11:33 17 sentence of 188 months, if the Court were inclined to ratify  
11:33 18 this agreement, would certainly suffice under the 3553 factors  
11:33 19 present in this case.

10:32 20       Thank you, Your Honor.

10:32 21       THE COURT: Thank you, Mr. Kreiss. Mr. Tamen.

10:32 22       MR. TAMEN: Your Honor, I think there was a math error  
10:32 23 by counsel. I think it is 180 months -- the 15 years.

10:32 24       MR. KREISS: Yes, Your Honor. I apologize for that  
10:32 25 error.

10:32 1                   THE COURT: That's okay. It shows there is someone in  
10:32 2 this courthouse whose math is bad as mine, which is almost  
10:32 3 unthinkable.

10:32 4                   MR. KREISS: That is why I went to law school.

10:32 5                   THE COURT: Yes, I do understand.

10:32 6                   MR. TAMEN: Your Honor, while this sentence is fairly  
10:32 7 harsh; it was only six months after his release on a lenient  
10:32 8 sentence where he is again back in a boat with more drugs.

10:32 9                   I think a lesson has to be sent not only to him but  
11:34 10 to those in his community -- in this small fishing community --  
10:32 11 that might think it is worth the risk.

11:43 12                   And, Your Honor, the way that we had agreed to divide  
11:43 13 this up would be 168 months on the criminal case and then an  
11:43 14 additional 12 months to run consecutive to the violation of  
11:43 15 supervised release; since the guidelines do call for that to be  
11:43 16 run consecutive.

11:43 17                   THE COURT: Okay.

11:43 18                   MR. TAMEN: So 168 plus 12 would equal the 180 months  
11:43 19 of our agreed recommendation.

11:43 20                   THE COURT: Thank you, Mr. Tamen.

11:43 21                   MR. TAMEN: Thank you, Your Honor.

10:32 22                   THE COURT: So, Mr. Lopez, you have been through this  
10:32 23 process before. Mr. Kreiss being a fine lawyer, and who has an  
11:45 24 excellent assistant in Mr. Felasco, I am sure has spoken with  
11:45 25 you and prepared you for today.

11:45 1 So you know that you have the opportunity to speak  
11:45 2 with me and tell me anything you would like for me to know  
11:45 3 about you or about your case.

11:45 4 You can take all of the time you need and you can  
11:45 5 speak with your lawyer at any time, but if you have something  
11:45 6 to share now would be the opportunity.

10:32 7 THE DEFENDANT: Your Honor, I am very remorseful for  
10:32 8 everything that I did. I just ask for mercy. I would ask for  
10:32 9 lots of mercy so that I can go back to be with my family as  
10:32 10 quickly as possible.

10:32 11 I think about my family, my kids -- my parents are now  
10:32 12 older as well. I apologize and ask for lots of mercy so I can  
10:32 13 be with my family again soon.

10:32 14 And so I apologize not only to the United States, but  
10:32 15 I apologize to everyone here. That is all.

10:32 16 THE COURT: Thank you, Mr. Armenta Lopez. The Court  
10:32 17 has considered the statements and recommendations of the  
10:32 18 parties, the presentence report which contains the advisory  
10:32 19 guidelines and the statutory factors set forth in 18 United  
10:32 20 States Code 3553(a).

10:32 21 It is the finding of the Court that the defendant is  
10:32 22 not able to pay a fine.

10:32 23 As to the 3553 factors, the Court is going to accept  
10:32 24 the parties' recommendation, which itself I think acknowledges  
10:32 25 Mr. Armenta Lopez's background and the factors that led him

10:32 1 back onto a boat less than six months later to conduct the  
10:32 2 business that he conducted.

10:32 3 Having said that, it is a difficult matter to try to  
12:02 4 craft a message, Mr. Tamen, for an entire community. I don't  
10:32 5 know that this Court or any Court can deliver an effective  
10:32 6 message where you have these organizations who recruit these  
10:32 7 very poor fisherman onto these small boats to transport these  
10:32 8 drugs and then of course treat them as fungible.

10:32 9 But I do agree in light of the repeat nature of Mr.  
10:32 10 Armenta Lopez's crimes and the amount of drugs involved here  
10:32 11 that the sentence must be higher than what might otherwise have  
10:32 12 been available to him.

10:32 13 Therefore, it is the judgment of the Court that the  
10:32 14 defendant is committed to the Bureau of Prisons to be imprisoned  
10:32 15 for a term of 168 months as to Count 1.

10:32 16 The term of imprisonment should be calculated from the  
10:32 17 date of arrest on June 28, 2016.

10:32 18 Upon release from imprisonment defendant shall be  
10:32 19 placed on supervised release for a term of five years as to  
10:32 20 Count 1.

10:32 21 Within 72 hours of release the defendant shall report  
10:32 22 in person to the Probation Office in the district where he is  
10:32 23 released; although it is not likely he will be released.

10:32 24 While on supervised release the defendant shall comply  
10:32 25 with the mandatory and standard conditions of supervised

1 release; including not committing any crimes, being prohibited  
2 from possessing a firearm or other dangerous device or weapon,  
3 not unlawfully possessing a controlled substance, cooperation  
4 in the collection of DNA.

5 The defendant shall also comply with the following  
6 special conditions: He must surrender to Immigration for  
10:32 7 removal proceedings.

10:32 8 He must also pay a \$100 special assessment.

10:32 9 Total sentence 168 months imprisonment, five years  
10:32 10 supervised release and a \$100 special assessment.

10:32 11 Now that sentence has been imposed, does the defendant  
10:32 12 or counsel object to the Court's findings of fact or the manner  
10:32 13 in which sentence was pronounced?

10:32 14 MR. KREISS: No, Your Honor.

10:32 15 THE COURT: Mr. Armenta Lopez, you have the right to  
10:32 16 appeal the sentence, within the parameters of your plea  
10:32 17 agreement. Any notice must be filed within 14 days after the  
10:32 18 entry of judgment.

10:32 19 If you cannot afford to pay for the appeal you may  
20 apply for leave to appeal in forma pauperis. Meaning the Court  
10:32 21 will appoint Mr. Kreiss to continue to represent you.

10:32 22 Is there anything further on behalf of the United  
10:32 23 States or Mr. Kreiss on this matter?

10:32 24 MR. TAMEN: The Government would move to dismiss the  
10:32 25 remaining counts of the indictment.

10:32 1                   THE COURT: All right. They will be dismissed. And now  
10:32 2 we will turn to the supervised release matter. I believe that  
10:32 3 there are two violations; both stemming from the charge for  
10:32 4 which I have just sentenced Mr. Armenta Lopez.

10:32 5                   Mr. Kreiss, what is Mr. Armenta Lopez's position with  
10:32 6 regard to these violations?

10:32 7                   MR. KREISS: He is going to admit the violations and  
10:32 8 plead guilty.

10:32 9                   THE COURT: The Court accepts Mr. Armenta Lopez's  
10:32 10 admission of violations 1 and 2 as set forth in the petition  
10:32 11 and therefore finds Mr. Armenta Lopez guilty of violation of  
10:32 12 his supervised release.

10:32 13                  MR. TAMEN: Your Honor, there are three.

10:32 14                  THE COURT: Oh, I'm sorry; I did see that.

10:32 15                  MR. KREISS: Your Honor, that was the technical  
10:32 16 violation of his not reporting. I don't know that he was in a  
10:32 17 position to report but for purposes of this hearing we can  
10:32 18 resolve it.

10:32 19                  THE COURT: Thank you, Mr. Kreiss. The Court will  
10:32 20 then amend its previous statement and find that Mr. Armenta  
10:32 21 Lopez has admitted his guilt to the three violations of  
10:32 22 supervised release as set forth in the petition.

10:32 23                  The Court therefore accepts his admission and finds  
10:32 24 him in violation of his supervised release.

10:32 25

10:32 1                   And, Mr. Kreiss, I believe that you have had an  
10:32 2 opportunity to review the proposed guidelines with your client  
10:32 3 as to the supervised release violation; is that correct?

04:21 4                   MR. KREISS: Correct. We did receive a copy of the  
04:21 5 petition which Mr. Felasco translated for him into Spanish.

04:21 6                   THE COURT: Very good. And it is my understanding the  
10:32 7 parties' recommendation is Mr. Armenta Lopez receive a 12 month  
10:32 8 sentence in this matter?

10:32 9                   MR. KREISS: Yes, Your Honor. And we would ask that  
10:32 10 Your Honor accept that recommendation.

10:32 11                  THE COURT: All right. Mr. Tamen, is there anything  
10:32 12 the Government would like to say regarding the recommendation?

10:32 13                  MR. TAMEN: No, Your Honor, just that we would join in  
10:32 14 the request for the 12-month consecutive sentence.

10:32 15                  THE COURT: All right. Mr. Lopez, you have heard your  
10:32 16 lawyer and Mr. Tamen; they have recommended a sentence that is  
10:32 17 a part of the global resolution of your supervised release and  
10:32 18 your underlying criminal conviction.

10:32 19                  You again have the opportunity to speak with me if you  
10:32 20 have anything to add or any other thoughts

10:32 21                  MR. TAMEN: Your Honor, before he speaks I would note  
10:32 22 that I have discussed with the probation officer -- since the  
10:32 23 defendant is going to be on supervised release on the other  
10:32 24 case -- I don't think that there is any point in placing him on  
10:32 25 supervised release on this case.

10:32 1 So we would recommend the 12 months and that he be  
10:32 2 revoked and terminated.

10:32 3 THE COURT: All right. Mr. Lopez.

10:32 4 THE DEFENDANT: I would ask you to take pity on me for  
10:32 5 my conduct. I ask for mercy so that I can go back to my family  
10:32 6 as soon as I can.

10:32 7 THE COURT: Thank you, Mr. Armenta Lopez. The Court  
10:32 8 has considered the statement of the parties as well as the  
10:32 9 facts set forth in the supervised release petition.

04:26 10 It is therefore the judgment of the Court that the  
04:26 11 defendant is committed to the Bureau of Prisons to be imprisoned  
04:26 12 for a term of 12 months which is to be served consecutively to  
04:27 13 the sentence imposed in Case No. 18-20602 with no supervision  
04:27 14 to follow.

04:27 15 Total sentence 12 months custody Bureau of Prisons to  
04:27 16 be served consecutive to the sentence that I just imposed of  
04:27 17 168 months.

04:27 18 Now that sentence has been imposed does the defendant  
04:27 19 or counsel object to the Court's findings of fact or the manner  
04:27 20 in which sentence was pronounced?

04:27 21 MR. KREISS: No, Your Honor.

04:27 22 THE COURT: Mr. Lopez, again, you have the right to  
04:27 23 appeal the sentence within the parameters of your plea  
04:27 24 agreement.

1                   Any notice must be filed within 14 days after the  
2 entry of judgment. If you cannot afford to pay for the appeal  
3 you may apply for leave to appeal in forma pauperis; meaning  
04:27 4 the Court will appoint Mr. Kreiss to represent you.

04:28 5                   Do you have any recommendation as to a designation?

10:32 6                   MR. KREISS: If Your Honor would make a recommendation  
10:32 7 for a facility as close to the Southern District of California  
10:32 8 as possible.

10:32 9                   THE COURT: I will make that recommendation. Is there  
04:29 10 anything further on behalf of the United States or Mr. Armenta  
04:29 11 Lopez?

04:29 12                   MR. TAMEN: No, Your Honor.

04:29 13                   MR. KREISS: No, Your Honor.

04:29 14                   THE COURT: We are adjourned.

15                   SENTENCING CONCLUDED

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2 C E R T I F I C A T E  
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4 I hereby certify that the foregoing is an accurate  
5 transcription of proceedings in the above-entitled matter.  
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8 /S/PATRICIA SANDERS  
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11 DATE FILED 12 PATRICIA SANDERS, RPR  
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