APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4447

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DUBLAS ARISTIDES LAZO, a/k/a Caballo,

Defendant.

No. 18-4449

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LELIS EZEQUIEL TREMINIO-TOBAR, a/k/a Scooby, a/k/a Decente,

Defendant - Appellant.

No. 18-4495

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DANIEL OSWALDO FLORES-MARAVILLA, a/k/a Impaciente, a/k/a Flaco,

Defendant - Appellant.

No. 18-4496

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN CARLOS GUADRON-RODRIGUEZ,

Defendant - Appellant.

No. 18-4509

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDRES ALEXANDER VELASQUEZ GUEVARA, a/k/a Pechada,

Defendant - Appellant.

No. 18-4512

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLOS JOSE BENITEZ PEREIRA, a/k/a Negro,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, Senior District Judge. (1:16-cr-00209-LO-4; 1:16-cr-00209-LO-5; 1:16-cr-00209-LO-7; 1:16-cr-00209-LO-2; 1:16-cr-00209-LO-8; 1:16-cr-00209-LO-6)

Submitted: April 22, 2020 Decided: May 28, 2020

Before THACKER, HARRIS, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Paul B. Vangellow, Falls Church, Virginia; Andrew M. Stewart, DENNIS, STEWART & KRISCHER, PLLC, Arlington, Virginia; Robert L. Jenkins, Jr., BYNUM & JENKINS, PLLC, Alexandria, Virginia; Christopher B. Amolsch, Reston, Virginia; Frank Salvato, Alexandria, Virginia; Joseph R. Conte, LAW OFFICE OF J.R. CONTE, Washington, D.C.; Vernida R. Chaney, CHANEY LAW FIRM, PLLC, Fairfax, Virginia; Pleasant S. Brodnax, III, Washington, D.C.; Charles J. Soschin, LAW OFFICE OF C.J. SOSCHIN, Washington, D.C.; Lavonda N. Graham-Williams, Alexandria, Virginia, for Appellants. G. Zachary Terwilliger, United States Attorney, Daniel T. Young, Assistant United States Attorney, Aidan Taft Grano, Assistant United States Attorney, Patricia T. Giles, Assistant United States Attorney, Morris R. Parker, Jr., Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated cases, five members of La Mara Salvatrucha (MS-13) and one non-member appeal from their respective criminal judgments after a jury convicted Appellants of various charges related to their early 2016 participation in and support of MS-13. Juan Carlos Guadron-Rodriguez was convicted of conspiracy to use interstate facilities in aid of extortion, as well as substantive extortion counts, in violation of 18 U.S.C. §§ 371, 1952(a)(3) (2018); Andres Alexander Velasquez Guevara was convicted of conspiracy to commit kidnapping, in violation of 18 U.S.C. § 1201(a)(1) (2018); and Carlos Jose Benitez Pereira, Lelis Ezequiel Treminio-Tobar, Daniel Oswaldo Flores-Maravilla, and Dublas Aristides Lazo were convicted of conspiracy to commit kidnapping, in violation of 18 U.S.C. § 1201(c) (2018), conspiracy to commit kidnapping and murder in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(5) (2018); and kidnapping resulting in death, in violation of 18 U.S.C. §§ 2, 1201(a)(1) (2018).

The conspiracy and substantive charges against Appellants stem from two MS-13 schemes. First, several MS-13 members extorted Johnny Reyes by repeatedly making him pay "rent" to the gang, in one instance holding a gun to his head and threatening his life if he did not make the required payments. Second, members of the gang kidnapped and murdered a rival gang member, Carlos Otero-Henriquez, by luring him into a vehicle under

the false pretense of taking him to a party. But instead of a party, they drove him to a remote area and stabbed him 51 times before dumping his mutilated body into a ravine.[1]

Guadron-Rodriguez and Velasquez Guevara assign error to the joinder of and the district court's refusal to sever the counts against them from the counts with which they were not charged. All Appellants assert the court erred when it refused to authorize a jury questionnaire or allow counsel to conduct individualized voir dire. Appellants also assign error to: (1) the court's refusal to admit evidence they insist established that Otero-Henriquez was not "inveigled" as required under the federal kidnapping statute; (2) the propriety of the court's jury instructions regarding the elements necessary to establish a violation of § 1952(a)(3) and the duress affirmative defense; and (3) the court's denial of a motion for mistrial and subsequent refusal to provide a curative instruction to the jury. Treminio-Tobar and Benitez Pereira assert that their life sentences violate the Eighth Amendment, Guadron-Rodriguez assigns error to the court's rejection of his objections to his Sentencing Guidelines range calculation, and Velasquez Guevara asserts that his life sentence is substantively unreasonable. Finding no error, we affirm.

I. Severance and Joinder

Velasquez Guevara asserts that, because he was only charged with conspiracy to commit kidnapping, the charges pertaining to the Reyes extortion were improperly joined

[1] Others charged in these indictments entered guilty pleas before trial: Manuel Antonio Centeno pled guilty to kidnapping resulting in death; Wilmar Javier Viera-Gonzalez pled guilty to charges of interstate facilities use conspiracy and kidnapping resulting in death; and Shannon Marie Sanchez pled guilty to being an accessory after-the-fact, in violation of 18 U.S.C. § 3 (2018).

in the same indictment. Guadron-Rodriguez similarly asserts that because he was only charged with the Reyes extortion counts, the counts related to kidnapping and murder were improperly joined and, alternatively, should have been severed by the district court.

The joinder of multiple offenses is proper under Fed. R. Crim. P. 8(a) if the offenses are: (1) of the same or similar character; (2) based on the same act or transaction; or (3) part of a common scheme or plan. *See United States v. Foutz*, 540 F.2d 733, 736 (4th Cir. 1976). Rule 8 also permits defendants to be joined in the same action if "they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(b). Separate offenses are considered acts within the same series "if they arise out of a common plan or scheme . . . unified by some substantial identity of facts or participants." *United States v. Porter*, 821 F.2d 968, 972 (4th Cir. 1987). We recently observed that "Rule 8 permits very broad joinder at the pleading stage.'" *United States v. Cannady*, 924 F.3d 94, 102 (4th Cir. 2019) (internal quotation marks, ellipses, and brackets omitted).

Even if offenses are properly joined, however, severance is appropriate if the defendant establishes that he would be prejudiced by the joinder. *See* Fed. R. Crim. P. 14(a). A defendant moving to sever counts in an indictment has the burden of demonstrating a "strong showing of prejudice," however, and "it is not enough to simply show that joinder makes for a more difficult defense." *United States v. Goldman*, 750 F.2d 1221, 1225 (4th Cir. 1984). "The fact that a separate trial might offer a better chance of acquittal is not a sufficient ground for severance." *Id.* Accordingly, a district court should grant a severance motion "only if there is a serious risk that a joint trial would compromise

a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *United States v. Qazah*, 810 F.3d 879, 891 (4th Cir. 2015).

"We review de novo the district court's refusal to grant defendants' misjoinder motion to determine if the initial joinder of the offenses and defendants was proper under [Rule] 8(a) and 8(b) respectively." *United States v. Mackins*, 315 F.3d 399, 412 (4th Cir. 2003). If joinder was improper, we review the error for harmlessness and will "reverse unless the misjoinder resulted in no actual prejudice to the defendants because it had no substantial and injurious effect or influence in determining the jury's verdict." *Id.* (internal quotation marks and brackets omitted). If we determine that joinder was proper, we then examine whether "the district court abused its discretion under [Rule] 14 in denying [the] pre-trial motion[] to sever." *Id.* Even if we conclude that an abuse of discretion occurred, we will only vacate a defendant's conviction when there has been a showing of "clear prejudice[.]" *United States v. Zelaya*, 908 F.3d 920, 929 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 855 (2019).

Appellants' arguments to the contrary, the extortion, kidnapping, and murder charges in the indictment arose from the same "common scheme"—i.e., the effort to promote MS-13 and to gain status within the gang by extortion and violence. The indictment alleged that all individuals charged were members and associates of the MS-13 Virginia Locos Salvatrucha ("VLS") clique and that, as members and associates, all were required to use violence, threats of violence, and intimidation to support the gang and to

protect the power, reputation, and territory of the gang. The indictment also alleged that members were expected to obtain money through illegal means, including extortion.

The extortion conspiracy count linked the violent and pecuniary aspects of the gang's activities by alleging that Guadron-Rodriguez and others conspired to extort money by threatening violence and death to Reyes and his family. And the conspiracy to commit murder and kidnapping in aid of racketeering count alleged that MS-13 works to promote and enhance itself and the activities of its members and associates by committing crimes, including, but not limited to, murder, and that the gang confronts and retaliates against rival gangs through violence, threats of violence, and intimidation.[2]

The joinder of charges related to the gang's extortion, kidnapping, and murder was thus consistent with cases where a single indictment has charged codefendants with offenses relating to a single overarching drug- and or gang-related enterprise. *See, e.g., United States v. Mouzone*, 687 F.3d 207, 219 (4th Cir. 2012) (affirming joinder of RICO and drug distribution counts, albeit against a single defendant, where "the government presented ample evidence showing that selling drugs was an activity in which [gang] members engaged to support the gang and rise in its ranks").

Even if the district court abused its discretion when it denied Guadron-Rodriguez's and Velasquez Guevara's motions to sever the charges against them, neither Appellant has

[2] While Appellants also challenge the indictment's inclusion of the unlawful reentry charge against Centeno, Centeno was not tried alongside Appellants. Because the Government presented no evidence regarding this offense at trial, Appellants were not prejudiced by inclusion of the reentry count. *See Goldman*, 750 F.2d at 1225.

shown "clear prejudice" to justify vacating their convictions. Velasquez Guevara claims that because he did not directly participate in Otero-Henriquez's murder, it was prejudicial for him to be tried for conspiring to commit kidnapping alongside the individuals who actually conducted the kidnapping and murder. But Velasquez Guevara knowingly lured Otero-Henriquez to his death and his lack of active participation rendered him no less culpable than his coconspirators. *See, e.g., United States v. Dinkins*, 691 F.3d 358 (4th Cir. 2012) (affirming the denial of a severance motion even where the evidence at trial involved murders with which not all defendants were charged because all defendants were charged with at least one murder and there was not a significant enough difference in their "degrees of culpability" to raise the specter of prejudice).

Guadron-Rodriguez, who was charged only in connection with the extortion scheme, argues that he should have been severed from the kidnapping and murder scheme. Without a severance, he claims, there was a risk of impermissible spillover prejudice. But the district court recognized the possibility of spillover prejudice in denying Guadron-Rodriguez's severance motion, acknowledging that Guadron-Rodriguez faced the most concrete possibility of being prejudiced by the testimony relating to the homicide. The court nonetheless concluded that all aspects of the case, including the extortion of Reyes, arose from one overarching conspiracy by members of this MS-13 clique.

The district court also reasoned that the jury would have no difficulty identifying the separate charges against each individual, and especially Guadron-Rodriguez, and that its instructions focusing the jury on the individual culpability and the consideration they must make as to each count as to each defendant would sufficiently protect him. We find

that the court's observations are fully supported by the record. *See United States v. Chong Lam*, 677 F.3d 190, 204 (4th Cir. 2012) (recognizing that "juries are presumed to follow their instructions") (internal quotation marks and citations omitted); *accord Mouzone*, 687 F.3d 207 at 219 (declining to find prejudice where "the district court instructed the jury to weigh the evidence as to each count individually").

Because joinder was not improper, and in light of Velasquez Guevara's and Guadron-Rodriguez's failure to meet the demanding burden of demonstrating a "strong showing" that they were prejudiced by the joinder so as to require severance, we discern no reversible error stemming from the district court's refusal to sever the charges against those Appellants.

II. Voir Dire

Appellants assert that the district court conducted an inadequate voir dire and erroneously denied their motions for authorization of a jury questionnaire and for individualized voir dire. Alleging that the President had recently condemned all who claimed membership in MS-13 and conflated illegal immigrants of Hispanic origin with MS-13 membership, Appellants insist potential jurors may have concluded that mere membership in MS-13 made them guilty. Thus, seating an impartial jury required, according to Appellants, using a jury questionnaire and individual voir dire .

"Voir dire plays an essential role in guaranteeing a criminal defendant's Sixth Amendment right to an impartial jury, in that it enables the court to select an impartial jury and assists counsel in exercising peremptory challenges." *United States v. Jeffery*, 631 F.3d 669, 673 (4th Cir. 2011) (internal quotation marks and citations omitted). "Despite

its importance, however, the adequacy of voir dire is not easily subject to appellate review." *Id.* (internal quotation marks and citations omitted). This is so because "[j]ury selection . . . is particularly within the province of the trial judge" and "[n]o hard-and-fast formula dictates the necessary depth or breadth of voir dire." *Skilling v. United States*, 561 U.S. 358, 386 (2010) (internal quotation marks and citations omitted).

In fact, "[t]he Supreme Court has not required specific voir dire questions except in very limited circumstances—capital cases and cases where racial or ethnic issues are inextricably bound up with the conduct of the trial such that inquiry into racial or ethnic prejudice of the jurors is constitutionally mandated[.]" *Jeffery*, 631 F.3d at 673 (internal quotation marks and citations omitted). "In non-capital cases . . . with no issues of racial or ethnic prejudice, the district court need not pursue a specific line of questioning on voir dire, provided the voir dire as a whole is reasonably sufficient to uncover bias or partiality in the venire." *Id.* at 673-74 (internal quotation marks and citations omitted).

Because "[t]he conduct of voir dire necessarily is committed to the sound discretion of the trial court[,]" *United States v. Lancaster*, 96 F.3d 734, 738 (4th Cir. 1996) (en banc), we review for abuse of discretion, *see United States v. Caro*, 597 F.3d 608, 613 (4th Cir. 2010). "A district court abuses its discretion . . . if the voir dire does not provide a reasonable assurance that prejudice would be discovered if present." *Lancaster*, 96 F.3d at 740 (internal quotation marks and citations omitted). Discretion is also abused when a voir dire procedure renders a "defendant's trial fundamentally unfair." *Skilling*, 561 U.S. at 387 n.20 (internal quotation marks and citations omitted).

Appellants have not established that the district court abused its broad discretion by failing to allow the questionnaire to be submitted to the jury and refusing counsel-directed voir dire. This case was not a capital case. Although Appellants suggest that racial or ethnic issues existed, the district court—when it orally denied the motions—assured defense counsel it would be necessary to ask about recent publicity and that it would be obtaining questions from defense counsel and the Government. The district court's own questioning took great efforts to root out potential biases during its voir dire. The court explained to the potential jurors that the case involved violent acts, including murder. And it asked several standard questions designed to root out potential bias against criminal defendants or in favor of law enforcement witnesses, including probing the potential jurors' ties to law enforcement, experience as crime victims, exposure to the criminal justice system, and involvement or experience with gangs or gang members. The district court then individually questioned venire members who answered "yes" to these questions, including asking crime victims about the race or ethnicity of their respective offenders and whether that particular juror could remain impartial.

The court next explained to the potential jurors that the case involved the MS-13 street gang and that it was critical that any jurors chosen to serve be able to adjudicate the case without bias. After acknowledging that most of the potential jurors had likely heard or read about gang violence in their area, including MS-13 gang activities, the court referenced the President's State of the Union Address in which the President mentioned gang violence. The court explained, however, that nothing they heard or read about had anything to do with the defendants in the case before them and that the court was certain

everyone could recognize that merely associating with a gang is not a crime. Indeed, the district court warned of the dangers of racial prejudice and national origin bias, admonished that it would be inappropriate to decide the case based on an opinion about immigration, and explained that it would be necessary to decide the case impartially despite the violent acts charged in the indictment. After so explaining, the district court asked whether any panel members felt that they could not decide the case fairly. It also asked the defense attorneys if they had any additional proposed questions, explaining that it had considered the proffered questionnaire in formulating its voir dire but asking whether there were any others counsel wanted the court to ask. *See Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981) (noting the district court's broad discretion in conducting voir dire and concluding that the court may limit counsel's participation to the submission of additional questions); *see also United States v. Skilling*, 561 U.S. 358, 372-73 (2010) (discussing the trial judge's rejection of the need for questioning by counsel because of the pretrial publicity and noting the trial judge's explanation that jurors provide more forthcoming responses to judge-led questioning).

In fact, two potential jurors later expressed concern about their respective biases, which demonstrates that the court's questioning was effective in identifying the potential for bias about which Appellants complain. Voir dire is a process by which the parties learn about prospective jurors so as to exercise challenges in an intelligent manner. *United States v. Brown*, 799 F.2d 134, 135 (4th Cir. 1986). Thus, while a voir dire that impairs a defendant's ability to exercise his challenges intelligently is grounds for reversal, *see United States v. Rucker*, 557 F.2d 1046, 1048 (4th Cir. 1977), the district court's voir dire

in this case consisted of questions aimed at rooting out any biases that Appellants' proposed questionnaire sought to discover. We, therefore, discern no abuse of discretion in the way the court conducted, or the substance of, the court's voir dire.

III. Evidence Exclusion

The Appellants convicted of kidnapping and murder assign error to the district court's exclusion of certain evidence they argue would have demonstrated that Otero-Henriquez willfully engaged with MS-13 on the night he was killed. Because the Government was required to establish that Otero-Henriquez was somehow tricked or "inveigle[d]" into boarding the vehicle the night he was murdered, evidence that Otero-Henriquez knowingly entered the vehicle to investigate whether the occupants were responsible for threats and other activities directed towards him and another gang should have been admitted. We review a district court's evidentiary rulings for an abuse of discretion and will only overturn a ruling that is arbitrary and irrational. *United States v. Farrell*, 921 F.3d 116, 143 (4th Cir.), *cert. denied*, 140 S. Ct. 269 (2019). Even if there is error, "we will not vacate a conviction if an error was harmless." *United States v. Sutherland*, 921 F.3d 421, 429 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 1106 (2020). We discern no reversible error in the challenged evidentiary rulings.

The federal kidnapping statute under which several of the Appellants were convicted provides that "[w]hoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward . . . when . . . the person is willfully transported in interstate . . . shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment."

18 U.S.C. § 1201. The district court thus correctly instructed the jury that, to convict Appellants of violating this statute, the Government had to prove that: (i) Appellants unlawfully and willfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away another person; (ii) the person was willfully transported in interstate commerce; (iii) Appellants held that person for ransom, reward, or other benefit or reason; and (iv) the person's death resulted. The court also correctly explained that to "inveigle" or "decoy" means to lure, or entice, or to lead a person astray by false representations, or promises, or other deceitful means.

While the parties do not dispute the validity of the district court's jury instructions on the elements necessary to establish the kidnapping violation, they debate whether Otero-Henriquez's state of mind was relevant. But the evidence presented at trial overwhelmingly established that Otero-Henriquez was brought to a particular location on May 21, 2016, and then transported to the location of his murder under the false pretense that he would be going to a party where girls would be present. And it was under those false pretenses that Otero-Henriquez agreed to accompany Appellants that evening, no matter if he also intended to gather information about the rival gang. As this court has held, "a kidnapping victim who accepted a ride from someone who misled her into believing that she would be taken to her desired destination was 'inveigled' or 'decoyed' within the meaning of the federal kidnapping statute." *United States v. Hughes*, 716 F.2d 234, 239 (4th Cir. 1983). We therefore discern no abuse of discretion in the district court's decision to exclude the evidence.

IV. Jury Instructions

Treminio-Tobar, Benitez Pereira, and Flores-Maravilla assign reversible error to the substance of the district court's jury instruction on the duress affirmative defense. Guadron-Rodriguez also assigns reversible error to the district court's jury instruction setting forth the elements that the Government had to establish before the jury could find him guilty of violating 18 U.S.C. § 1952(a)(3) ("the Travel Act"). A district court's "decision to give (or not to give) a jury instruction . . . [is generally] reviewed for abuse of discretion." *United States v. Russell*, 971 F.2d 1098, 1107 (4th Cir. 1992). A jury instruction is not erroneous if, "in light of the whole record, [it] adequately informed the jury of the controlling legal principles without misleading or confusing the jury to the prejudice of the objecting party." *United States v. Miltier*, 882 F.3d 81, 89 (4th Cir.) (internal quotation marks and citations omitted), *cert. denied*, 139 S. Ct. 130 (2018). Thus, in reviewing a challenge to jury instructions, "we do not view a single instruction in isolation[,]" but instead "consider whether taken as a whole and in the context of the entire charge, the instructions accurately and fairly state the controlling law." *United States v. Blankenship*, 846 F.3d 663, 670-71 (4th Cir. 2017) (internal quotation marks and citations omitted).

A. Duress Affirmative Defense

At trial, Treminio-Tobar, Benitez Pereira, and Flores-Maravilla predicated their defenses on their assertion that they participated in the charged conduct under duress or coercion. Appellants thus proposed a duress jury instruction, which they obtained from *O'Malley, Grenig and Lee's Federal Jury Practice and Instructions* ("the *O'Malley* instruction"). The Government objected to any instruction being given but argued that, if

one was to be given, it should reflect all elements of the defense in accordance with this Court's decision in *United States v. Perrin*, 45 F.3d 869 (4th Cir. 1995) ("the *Perrin* instruction"). The district court acknowledged that, while it may have given the *O'Malley* instruction in the past, it believed the Government's proposed instruction clearly reflected language beyond that identified in *O'Malley*.

Appellants now assert that the duress instruction given by the district court was faulty as a matter of law and deprived them of a fair trial because the instruction: (1) lacked necessary verdict-directing language informing the jury that it had to find defendants not guilty if they determined defendants acted under duress when they committed the alleged offenses; and (2) failed to define "reckless" and "reasonable legal alternative[,]" which were included in the court's instruction. Although Appellants generally objected to the district court's use of the *Perrin* instruction, they failed to make the district court aware that they believed the instruction was faulty because it lacked verdict-directing language and contained undefined terms. The Federal Rules of Criminal Procedure state that "[a] party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate." Fed. R. Crim. P. 30(d). The Rule also provides that "[f]ailure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b)." *Id.*

Thus, "[a] party wishing to preserve an exception to a jury instruction must state distinctly the matter to which he objects and the grounds of his objection." *United States v. Nicolaou*, 180 F.3d 565, 569 (4th Cir. 1999) (internal quotation marks, brackets, and

citations omitted). If a party objects that it believes certain language pertaining to one element of a crime should be included in a particular instruction, for example, that party does not preserve an argument later raised on appeal that different language should also have been included regarding that element. *Id.* Accordingly, we review the propriety of the district court's decision to issue the *Perrin* instruction for plain error. *Id.*

To establish the district court committed plain error in giving the *Perrin* instruction, Appellants are required to establish that: "(1) there was error; (2) the error was plain; and (3) the error affected [their] substantial rights." *United States v. Cowden*, 882 F.3d 464, 475 (4th Cir. 2018). Even if Appellants make the required showing, however, "we may exercise our discretion to correct the error only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (internal quotation marks, brackets, and citations omitted). We discern no plain error by the district court.

1. Verdict-Directing Language

Appellants concede that we have not yet ruled that verdict-directing language is an essential component of an affirmative defense instruction and necessary to ensure due process. Contrary to Appellants' arguments, however, we have repeatedly held that jury instructions must be reviewed "as a whole and in the context of the trial," and we will affirm so long as the instructions were "not misleading and contained an adequate statement of the law to guide the jury's determination[.]" *United States v. Scott*, 424 F.3d 431, 436 (4th Cir. 2005); *see United States v. McQueen*, 445 F.3d 757, 759 (4th Cir. 2006) ("Jury instructions are reviewed to determine whether, taken as a whole, the instructions fairly state the controlling law.") (internal quotation marks and citations omitted).

Accordingly, we will not "view a single instruction in isolation[,]" but instead consider the instructions "taken as a whole and in the context of the entire charge[.]" *United States v. Raza*, 876 F.3d 604, 614 (4th Cir. 2017) (internal quotation marks and citations omitted).

During its charge to the jury, the district court repeatedly instructed the jury that Appellants were entitled to the presumption of innocence, that the burden is always upon the prosecution to prove guilt beyond a reasonable doubt, that the burden never shifts to a defendant, and that, if the jury—after careful and impartial consideration of all the evidence in the case—has a reasonable doubt that a defendant is guilty of a charge, it must acquit. Notably, the court's instructions repeated the reasonable doubt standard and duty to acquit language multiple times. And, as to the duress instruction, the court correctly informed the jury that the defendants only needed to establish the justification defense by a preponderance of evidence and that coercion or duress may provide a legal justification or excuse for the charged offense. Viewing the district court's jury instructions in their totality, we conclude that the jury was well aware it should acquit if it found Appellants acted under duress.[3]

2. "Recklessly" and "Reasonable Legal Alternative"

We also discern no plain error in the district court's failure to include language

[3] Even if we were to conclude that the omission of verdict-directing language was error, any error would not be "plain." *See United States v. Ellis*, 326 F.3d 593, 598 (4th Cir. 2003) (holding that "any alleged error . . . cannot be 'plain'" where the legal issues before the court were, "at best, largely undecided"); *see also United States v. Harris*, 890 F.3d 480, 491 (4th Cir. 2018) ("At a minimum, courts of appeals cannot correct an error pursuant to plain error review unless the error is clear under current law." (internal quotation marks, brackets, and citations omitted)).

defining "recklessly" and "reasonable legal alternative" in the duress instruction. This court has repeatedly confirmed that district courts receive "much discretion to fashion the charge." *Id*. at 614. Nor is it a per se rule that all terms in jury instructions be expressly defined. *United States v. Walton*, 207 F.3d 694, 696-99 (4th Cir. 2000) (en banc) (recognizing that "[t]here is no constitutional requirement to define reasonable doubt to a jury" and that even "[t]he Supreme Court has never required trial courts to define the term").

Moreover, we find that, in this case, the meaning of the terms "recklessly" and "reasonable legal alternative" made sense in context. The second element of the *Perrin* instruction explained that a defendant has to prove that he did not recklessly place himself in a situation where he would be forced to engage in criminal conduct. Because the standard instructs the jury to assess the situation in which the defendant placed himself, the jury necessarily had to evaluate whether that defendant's choices were made either knowing or disregarding a likelihood that he would then be forced to engage in criminal conduct. Similarly, the plain meaning of "reasonable legal alternative" is evident to jurors applying common sense as they debate the facts during deliberation. *See id.* at 699 (observing that definitions involving reasonableness "cannot be divorced from [their] specific context" and should be left to the jury).

In any event, we find that the district court's failure to define these terms did not affect Appellants' substantial rights. Appellants have never proffered a definition for either term from any authority of this Court or the Supreme Court. Without an established definition, Appellants cannot demonstrate that the jury understood—and therefore

applied—"recklessness" or "reasonable[ness]" standards that were less favorable than the law required. And, in the absence of such caselaw, Appellants cannot establish that any error was both plain and affected their substantial rights. Moreover, the Government presented the jury with overwhelming evidence that Appellants knowingly, not just recklessly, placed themselves in the vehicle on the night Otero-Henriquez was murdered. And, while the Government argued to the jury that Appellants had actual knowledge of Otero-Henriquez's impending murder, defense counsel for Treminio-Tobar and Benitez Pereira both focused on their clients' alleged lack of knowledge during their respective closing arguments and mentioned that the jury could not convict those individuals merely by virtue of their association with MS-13. We find that counsels' focus regarding whether Appellants knowingly and voluntarily placed themselves in the criminal situation and whether they were able to escape from it, when viewed in conjunction with the overwhelming evidence that Appellants were well aware of the gang's intentions and yet continued participating in the gang's activities, shows that Appellants cannot establish that the jury would have acquitted them had the district court defined "recklessly" and "reasonable legal alternative."

B. Travel Act

The Travel Act makes it unlawful for anyone who "travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to . . . (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful

activity[.]" 18 U.S.C. § 1952(a). During argument regarding jury instructions, counsel for Guadron-Rodriguez confirmed that she wished to argue during closing that there was no use of interstate facilities to support a Travel Act conviction because the Government presented no evidence that Guadron-Rodriguez's extortion phone calls to Reyes took place between people in different states. Counsel also objected to the Government's proposed jury instruction to the extent that it indicated that the "facilities in interstate commerce" underlying the Travel Act charges were cellular telephones. The district court noted counsel's exception but indicated that it would give the Government's instruction.

Guadron-Rodriguez assigns error to the court's ruling on appeal and insists that his convictions for using interstate facilities in aid of extortion must be vacated. Primarily relying on two Sixth Circuit cases and this Court's decision in *United States v. LeFaivre*, 507 F.2d 1288 (4th Cir. 1974), Guadron-Rodriguez insists that the Travel Act was not enacted to proscribe purely intrastate activities, such as his conduct in this case. In *LeFaivre*, however, we rejected the appellants' argument that the Travel Act should be narrowly construed and, thus, its reach limited. *Id.* at 1293 ("Assuming for the moment that the post-*Rewis* decisions relied upon by appellants were correctly decided, we believe each can be readily explained by factors having nothing to do with a narrow or restricted reading of the Travel Act."); *see Rewis v. United States*, 401 U.S. 808, 811 (1971) (recognizing that, while "[l]egislative history of the [Travel] Act is limited, [it] does reveal that § 1952 was aimed primarily at organized crime and, more specifically, at persons who reside in one State while operating or managing illegal activities located in another"). We then held that, "when the ordinary meaning of the Travel Act clearly covers an activity, we

will not read into the Act any requirement that travel in interstate commerce or use of facilities in interstate commerce be a 'substantial' or an 'integral' part of the activity." *LeFaivre*, 507 F.2d at 1296-97.

In discussing prior caselaw under the Travel Act, however, we observed that the Seventh Circuit had taken issue with one of our prior decisions because "'it suggest[ed] that [a] check need not actually travel interstate.'" *Id.* at 1291 n.5 (citing *United States v. Isaacs*, 493 F.2d 1124, 1149 (7th Cir. 1974)). We then observed that, in *Isaacs*, the Seventh Circuit "pointed out that the statute explicitly requires some actual use of an interstate facility for the purpose of interstate travel or an interstate transaction, rather than merely the use of an interstate facility for an intra-state purpose." *Id.* And we "acknowledge[d] the ambiguity[] and agree[d] that there must be some utilization of a facility in an interstate transaction to invoke the Travel Act." *Id.*

Although the above-mentioned statement from *LeFaivre* does lend some support to Guadron-Rodriguez's argument that making purely intrastate cellular telephone calls may not be punishable under the Travel Act, the Government correctly observes that our statement—which was in a footnote—had nothing to do with our ultimate decision and, thus, was mere dicta having no binding effect on this court. *See U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 463 n.11 (1993) (recognizing that, in determining whether a statement from a prior decision is binding, courts must "distinguish an opinion's holding from its dicta"); *United States v. Pasquantino*, 336 F.3d 321, 328-29 (4th Cir. 2003) (en banc) (noting that certain statements that are "not necessary to decide the case" are "pure and simple dicta, and, therefore, cannot serve as a source of binding

authority in American jurisprudence") (internal quotation marks and citations omitted). No subsequent decision from this court has cited this language, let alone as a binding statement of law.

And contrary to Guadron-Rodriguez's argument and the cited Sixth Circuit decisions, most cases since *LeFaivre* have held—or at least suggested—that the Travel Act applies to the type of "intrastate" conduct at issue here so long as an instrument of interstate commerce is utilized. *See Perrin v. United States*, 444 U.S. 37, 39, 49 (1979) (noting, after repeating the language of § 1952, that the "indictment charged that Perrin and his codefendants *used the facilities of interstate commerce* for the purpose of promoting a commercial bribery scheme" and distinguishing its prior decision in *Rewis* by pointing out that "[t]here was no evidence that Rewis had *employed interstate facilities* to conduct his numbers operation") (emphasis added); *United States v. Halloran*, 821 F.3d 321, 342 (2d Cir. 2016) (holding that purely intrastate telephone calls trigger § 1952); *United States v. Nader*, 542 F.3d 713, 718-20 (9th Cir. 2008) (same); *United States v. Baker*, 82 F.3d 273, 275-76 (8th Cir. 1996) (holding that intrastate withdrawal from interstate ATM network triggers § 1952); *United States v. Heacock*, 31 F.3d 249, 254-55 (5th Cir. 1994) (holding that intrastate use of the federal mail triggers § 1952); *United States v. Riccardelli*, 794 F.2d 829, 832-34 (2d Cir. 1986) (same); *see also United States v. Nardello*, 393 U.S. 286, 293 (1969) (holding that § 1952 "imposes penalties upon any individual crossing state lines *or using interstate facilities* for any of the statutorily enumerated offenses") (emphasis added).

A similar line of precedent, interpreting materially identical language, exists for the Travel Act's murder-for-hire provision. *See* 18 U.S.C. § 1958 (2018). When Congress initially enacted the statute, the substantive criminal prohibition referred to the use of a facility "in" interstate commerce (like § 1952), while subsection (b) of the statute defined only a facility "of" interstate commerce. *See Nader*, 542 F.3d at 720 (describing legislative history of § 1958). As a matter of plain meaning, the Fifth Circuit found that the prepositional phrase "in interstate commerce" modified "facility," and not "use," and that "intrastate use of interstate facilities" both satisfied the statute and cohered with Congress' Commerce Clause authority. *United States v. Marek*, 238 F.3d 310, 316-17 (5th Cir. 2001) (en banc). That court rejected any meaningful distinction between a facility "in" interstate commerce and one "of" interstate commerce, concluding that the Travel Act—which includes § 1952—was intended to reach intrastate uses of interstate instrumentalities. *Id.* at 319-20. Both the Second and Seventh Circuits later adopted *Marek*'s reasoning and concluded that Congress intended to use "in" and "of" interchangeably in the Travel Act to reach intrastate activity. *See United States v. Perez*, 414 F.3d 302, 303-05 (2d Cir. 2005); *United States v. Richeson*, 338 F.3d 653, 660 (7th Cir. 2003).

Even before *Marek*, however, this Court held that § 1958 required only the use of an "interstate telephone service or other commerce facilit[y] with the requisite intent." *United States v. Coates*, 949 F.2d 104, 105 (4th Cir. 1991). And we approvingly cited the reasoning in *Marek* and *Baker* and concluded that Congress has the power under the Commerce Clause to reach purely intrastate activities involving interstate instrumentalities. *See United States v. Photogrammetric Data Servs., Inc.*, 259 F.3d 229, 250-52 (4th Cir.

2001), *overruled in part on other grounds by Crawford v. Washington*, 541 U.S. 36 (2004). Given the vast weight of out-of-circuit authority finding that § 1952(a) covers intrastate use of interstate facilities, and the extensive circuit and out-of-circuit authority at least indirectly supporting the accuracy of the § 1952(a)-related authority, we affirm Guadron-Rodriguez's Travel Act convictions.

V. Motion for Mistrial

Appellants assert that it was error for the district court to deny their motion for a mistrial after the Government informed the jury during its closing argument that MS-13 members cannot claim that they acted out of duress. According to Appellants, the First Amendment guarantees the right to freely associate with others, including gangs, so the Government's comments—and the district court's refusal to provide a curative instruction regarding the comments—violated that right and deprived them of a fair trial.

"We review a district court's denial of a motion for mistrial for abuse of discretion" and will "reverse only under the most extraordinary of circumstances." *Zelaya*, 908 F.3d at 929 (internal quotation marks and citations omitted). When a motion for a mistrial arises from a claim of prosecutorial misconduct during closing argument, the test for reversible error has two components: "first, the defendant must show that the prosecutor's remarks or conduct were improper and, second, the defendant must show that such remarks or conduct prejudicially affected his substantial rights so as to deprive him of a fair trial." *United States v. Scheetz*, 293 F.3d 175, 185 (4th Cir. 2002).

In assessing whether reversible error occurred, relevant factors include:

> (1) the degree to which the prosecutor's remarks had a tendency to mislead the jury and to prejudice the defendant; (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the defendant; (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters; (5) whether the prosecutor's remarks were invited by improper conduct of defense counsel; and (6) whether curative instructions were given to the jury.

Id. at 186. "These factors are examined in the context of the entire trial, and no one factor is dispositive." *United States v. Lighty*, 616 F.3d 321, 361 (4th Cir. 2010). Moreover, the remedy of a new trial "is reserved for the most egregious cases[.]" *United States v. Dudley*, 941 F.2d 260, 264 (4th Cir. 1991). We discern no error in the court's refusal to grant the motion for a mistrial.

After the court instructed the jury that, to make out a duress defense, Appellants had to show, in part, that they did not recklessly place themselves in a situation where they would be forced to engage in criminal conduct, the Government described in its closing argument how the jury heard numerous witnesses testify about MS-13's open and notorious reputation for violence and murder, particularly against rival gang members. The Government also noted the absence of evidence that Appellants were unaware of that fact, were somehow unaware of the fact that MS-13 was a violent gang, and were somehow unaware that joining MS-13 meant that they were going to be committing crimes. The Government then concluded its argument on this point by suggesting that, "[b]ecause none of [the defendants] can prove to you that they were unaware that joining MS-13 meant they might have to commit crimes, any justification or duress defense fails for that reason alone." J.A. 3963.

We find that the Government's remarks were not misleading but were merely its spin on why Appellants could not establish an element of the duress affirmative defense; to wit: they did not "recklessly place [themselves] in a situation where [they] would be forced to engage in criminal conduct." In addition, the challenged statements spanned only two of nearly 65 transcript pages containing the Government's closing argument and nearly 40 pages containing its rebuttal argument and, thus, the remarks were not extensive. Moreover, the Government's evidence of Appellants' guilt was overwhelming, and there is nothing in the record to suggest that the Government's comments were deliberately placed before the jury to divert its attention to extraneous matters. Finally, although the district court did not provide a curative instruction after the Government's closing argument, the district court previously instructed the jury that association with MS-13 and its members, standing alone, is not criminal. These instructions addressed the very concern Appellants raised in their mistrial motion, and we discern no error in the court's refusal to provide a curative instruction. After considering all of these factors, we conclude that the Government's remarks during closing "did not so infect the trial with unfairness as to make the resulting conviction a denial of due process." *Scheetz*, 293 F.3d at 186 (internal quotation marks and citations omitted).

VI. Sentencing

Some Appellants also challenge their sentences on appeal. Citing *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), Treminio-Tobar and Benitez Pereira assert that their life sentences violate the Eighth Amendment. Guadron-Rodriguez asserts that the district court erroneously calculated his Guidelines

range. Velasquez Guevara essentially asserts that his life sentence was unjustified and unwarranted.

"We review a sentence for reasonableness 'under a deferential abuse-of-discretion standard[,]'" *United States v. McCoy*, 804 F.3d 349, 351 (4th Cir. 2015) (quoting *Gall v. United States*, 552 U.S. 38, 41 (2007)), and review unpreserved, non-structural sentencing errors for plain error, *see United States v. Lynn*, 592 F.3d 572, 575-76 (4th Cir. 2010). When reviewing a sentence for reasonableness, we must consider both the procedural and substantive reasonableness of the sentence. *See Gall*, 552 U.S. at 51. First, this court must assess whether the district court properly calculated the advisory Guidelines range, considered the 18 U.S.C. § 3553(a) (2018) factors, analyzed any arguments presented by the parties, and sufficiently explained the selected sentence. *See Gall*, 552 U.S. at 49-51; *Lynn*, 592 F.3d at 575-76.

Assuming no procedural error is found, "[a]ny sentence that is within or below a properly calculated Guidelines range is presumptively reasonable[,]" *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014), and "[t]hat presumption can only be rebutted by showing that the sentence is unreasonable when measured against the . . . § 3553(a) factors[,]" *United States v. Vinson*, 852 F.3d 333, 357-58 (4th Cir. 2017) (internal quotation marks and citations omitted). "[B]ecause district courts are in a superior position to find facts and judge their import, all sentencing decisions—whether inside, just outside, or significantly outside the Guidelines range—are entitled to due deference." *United States v. Spencer*, 848 F.3d 324, 327 (4th Cir. 2017) (internal quotation marks and citations omitted).

A. Constitutionality

Treminio-Tobar and Benitez Pereira challenge the constitutionality of their life sentences by summarily asserting that the mandatory sentence prevented the district court from being able to make a proportionality determination by considering important mitigating factors like their roles in the offense, any non-history of violent criminal behavior, and critical factors pertaining to youth. Appellants further assert that their age was an especially important consideration because the Supreme Court has held that age holds a special place in Eighth Amendment jurisprudence.

Contrary to Appellants' argument, however, the Supreme Court has held that life sentences do not require individualized consideration under the Eighth Amendment. *See Harmelin v. Michigan*, 501 U.S. 957, 994-96 (1991). Admittedly, the Supreme Court has cautioned that "[a]n offender's age is relevant to the Eighth Amendment," *Graham*, 560 U.S. at 76, and that "mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age[,]" *Miller*, 567 U.S. at 476. But Treminio-Tobar was 19 years old at the time of Otero-Henriquez's murder, and Benitez Pereira was 20 years of age at that time. Because neither Appellant was a juvenile at the time of Otero-Henriquez's murder, their mandatory life sentences do not violate the Eighth Amendment. *See United States v. Chavez*, 894 F.3d 593, 609 (4th Cir. 2018) (holding that *Miller* did not render mandatory life sentences unconstitutional where defendants were 18 and 19 at the time they committed their crimes), *cert. denied*, 139 S. Ct. 278 (2018). We thus reject Treminio-Tobar's and Benitez Pereira's challenge to their sentences.

B. Procedural Reasonableness

Guadron-Rodriguez asserts that the court erroneously failed to apply a three-level mitigating role adjustment to his offense level, under the U.S. Sentencing Guidelines ("USSG") § 3B1.2 (2016), and then erroneously increased his offense level, under USSG § 2B3.2(b)(1) (2016), because the crimes of which he was convicted involved the threat of death, bodily injury, or kidnapping, and under USSG § 2B3.2(b)(3)(A)(iii) (2016), because he brandished or possessed a firearm during the crimes of which he was convicted. Because both assignments of error pertain to the district court's factual findings, and since Guadron-Rodriguez raised these objections in the district court, we review the court's sentencing decisions for clear error. *See, e.g.*, *United States v. Kiulin*, 360 F.3d 456, 463 (4th Cir. 2004) (recognizing that this Court reviews for clear error a district court's decision regarding a defendant's role in the offense).

Although a criminal defendant may receive a two-level reduction for playing a "minor" role in a conspiracy, *see* USSG § 3B1.2, the reduction may only be made when the defendant is a participant "who is less culpable than most other participants, but whose role could not be described as minimal." *See* USSG § 3B1.2 cmt. n.5. The defendant has the burden of showing by a preponderance of the evidence that he played a mitigating role in the offense. *United States v. Akinkoye*, 185 F.3d 192, 202 (4th Cir. 1999).

Guadron-Rodriguez insists that he was the least culpable in the gang's scheme to extort Reyes and, therefore, should have received the benefit of the reduction. In deciding whether a defendant played a minor or minimal role, however, "[t]he critical inquiry is . . . not just whether the defendant has done fewer 'bad acts' than his co-defendants, but

whether the defendant's conduct is material or essential to committing the offense." *United States v. Pratt*, 239 F.3d 640, 646 (4th Cir. 2001) (internal quotation marks and citations omitted). Accordingly, Guadron-Rodriguez being "the least culpable[,]" in and of itself, did not justify application of the adjustment.

Guadron-Rodriguez also insists that his participation in the extortion conspiracy was limited because his only role was to retrieve "rent" from Reyes as directed by Viera-Gonzalez. According to Guadron-Rodriguez, he was not the decisionmaker, did not plan the conspiracy, and held very little information about the conspiracy. But the district court expressly found that Guadron-Rodriguez was not a minor player but an equal participant in the conspiracy. According to the district court, Guadron-Rodriguez was the person who met with Reyes on three of four occasions and set up the final extortion payment. The court also found that Guadron-Rodriguez was fully aware of the whole extortion scheme and even sent the money that he received to gang leaders in El Salvador. We find that the district court's conclusion that Guadron-Rodriguez was a primary and significant player in the extortion scheme is fully supported by the record and, thus, discern no clear error in the district court's refusal to apply the two-level minor role adjustment.

Although Guadron-Rodriguez insists that his offense level should not have been enhanced because he did not know Viera-Gonzalez would point a gun at Reyes or lodge threats for money, we also discern no clear error in the court's decision to enhance the offense level based on threats of violence or firearm possession. Having been presented with evidence that the crimes of which Guadron-Rodriguez was convicted involved the threat of violence and, in at least one situation, the brandishing of a firearm by his

codefendant, we find that the district court correctly rejected Guadron-Rodriguez's role enhancement objections. Because the district court's findings are "plausible in light of the record viewed in its entirety[,]" we discern no clear error by the district court. *United States v. Robinson*, 744 F.3d 293, 300 (4th Cir. 2014) (internal quotation marks and citations omitted).

C. Substantive Reasonableness

Velasquez Guevara asserts that his life sentence is substantively unreasonable because he was not a member of MS-13, was only indicted for conspiracy to commit kidnapping, played no role in the actual killing of Otero-Henriquez or the gang's extortion scheme, and—although his nonmandatory Guidelines range was life in prison—he did not face a statutory mandatory life sentence like some of his codefendants. Despite Velasquez Guevara's attempts to minimize his involvement in Otero-Henriquez's murder, Velasquez Guevara was just as responsible for the murder as his codefendants. In fact, it was Velasquez Guevara who initially—and without prompting from the gang—befriended Otero-Henriquez, notified the gang about Otero-Henriquez and his involvement in a rival gang, and agreed to lure—and did lure—Otero-Henriquez to a particular location so that he could be murdered.

Moreover, in imposing Velasquez Guevara's sentence, the district court expressly observed that it believed Velasquez Guevara's trial testimony to be inherently incredible, felt that he minimized his own involvement in an attempt to exonerate himself, and that the evidence established that he knew and understood the MS-13 rules completely. After listening to Velasquez Guevara's allocution, in which he professed ignorance of the gang's

intent to kill Otero-Henriquez, the court indicated that it did not believe Velasquez Guevara and that Velasquez Guevara knew from day one what it meant to bring Otero-Henriquez to the gang and, thus, he put the murder plot in motion. The court concluded that Velasquez Guevara was as responsible for Otero-Henriquez's death as every other member of the group that actually stabbed him. We will not second-guess the court's credibility determinations, which were made after observing Velasquez Guevara's demeanor. *See United States v. Thompson*, 554 F.3d 450, 452 (4th Cir. 2009) ("[W]hen a district court's factual finding is based upon assessments of witness credibility, such finding is deserving of the highest degree of appellate deference.") (internal quotation marks and citations omitted).

Although Velasquez Guevara suggests that a lesser sentence was warranted because, despite his Guidelines range, his statute of conviction allowed for "any term of years or for life[,]" *see* 18 U.S.C. § 1201(c), nothing in the district court's imposition of a life sentence suggests that it was unaware of the nonmandatory nature of Velasquez Guevara's Guidelines range, and Velasquez Guevara does not suggest that the court relied on an impermissible sentencing factor when it imposed the life sentence. We thus apply the presumption of reasonableness to the within-Guidelines sentence. *See Zelaya*, 908 F.3d at 930; *see also United States v. Morace*, 594 F.3d 340, 346 (4th Cir. 2010) (recognizing that, even if this Court would have imposed a different sentence, this fact alone will not justify vacatur of the district court's sentence).

Based on the foregoing, we affirm the criminal judgments against Appellants. We dispense with oral argument because the facts and legal contentions are adequately

presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: May 28, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4447 (L)
(1:16-cr-00209-LO-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DUBLAS ARISTIDES LAZO, a/k/a Caballo

Defendant - Appellant

No. 18-4449
(1:16-cr-00209-LO-5)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LELIS EZEQUIEL TREMINIO-TOBAR, a/k/a Scooby, a/k/a Decente

Defendant - Appellant

No. 18-4495
(1:16-cr-00209-LO-7)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DANIEL OSWALDO FLORES-MARAVILLA, a/k/a Impaciente, a/k/a Flaco

Defendant - Appellant

No. 18-4496
(1:16-cr-00209-LO-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JUAN CARLOS GUADRON-RODRIGUEZ

Defendant - Appellant

No. 18-4509
(1:16-cr-00209-LO-8)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ANDRES ALEXANDER VELASQUEZ GUEVARA, a/k/a Pechada

Defendant - Appellant

No. 18-4512
(1:16-cr-00209-LO-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CARLOS JOSE BENITEZ PEREIRA, a/k/a Negro

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgments of the district court are affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA
v.

Case Number: 1:16CR00209

JUAN CARLOS GUADRON-RODRIGUEZ
Aka Carlos Carranza, Chispa
Defendant.

USM Number: 90277-083
Defendant's Attorney: Vernida Chaney, Esq.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts One, Two, Three, Four and Five after a plea of not guilty.

Accordingly, the defendant is adjudicated guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. § 371	Conspiracy	Felony	April 2016	One
18 U.S.C. §§ 2 and 1952(a)(3)	Use of Interstate Facilities in Aid of Specified Unlawful Activity	Felony	March 3, 2016	Two

As pronounced on July 6th, 2018, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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 must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 6th day of July, 2018.

Liam O'Grady
United States District Judge

Defendant's Name: GUADRON-RODRIGUEZ, JUAN CARLOS
Case Number: 1:16CR00209

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. §§ 2 and 1952(a)(3)	Use of Interstate Facilities in Aid of Specified Unlawful Activity	Felony	March 23, 2016	Three
18 U.S.C. §§ 2 and 1952(a)(3)	Use of Interstate Facilities in Aid of Specified Unlawful Activity	Felony	March 31, 2016	Four
18 U.S.C. §§ 2 and 1952(a)(3)	Use of Interstate Facilities in Aid of Specified Unlawful Activity	Felony	April 14, 2016	Five

Defendant's Name: GUADRON-RODRIGUEZ, JUAN CARLOS
Case Number: 1:16CR00209

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of SEVENTY-EIGHT (78) MONTHS. This term of imprisonment consists of a term of SIXTY (60) MONTHS on Count One to run consecutively to all other counts and a term of EIGHTEEN (18) MONTHS on each Count Two, Three, Four and Five, all to run concurrently to each other and consecutively to count one for a total term of SEVENTY-EIGHT (78) MONTHS.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant be placed at a facility with a low population of MS-13 gang members; with an emphasis that the defendant not be placed at a facility in California.

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

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Defendant's Name: GUADRON-RODRIGUEZ, JUAN CARLOS
Case Number: 1:16CR00209

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS. This term consists of a term of THREE (3) YEARS on Counts One, Two, Three, Four and Five, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of Supervised Release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of Supervised Release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: GUADRON-RODRIGUEZ, JUAN CARLOS
Case Number: 1:16CR00209

SPECIAL CONDITIONS OF SUPERVISION

While on Supervised Release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1. At the completion of his term of incarceration, the defendant shall surrender to immigration authorities for a deportation review/proceedings, and if deported, shall remain outside of the United States during the term of supervised release and thereafter, unless he receives advance permission form the proper authorities to return.

2. If available for active supervision by the probation office, the defendant shall participate in substance abuse testing and treatment as directed and shall assist in paying costs of testing and treatment as directed.

3. The defendant shall have no contact with the victim or with any known gang member.

Defendant's Name: GUADRON-RODRIGUEZ, JUAN CARLOS
Case Number: 1:16CR00209

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

Count	Assessment	Fine	Restitution
One	$100.00	$0.00	$0.00
Two	$100.00	$0.00	$0.00
Three	$100.00	$0.00	$0.00
Four	$100.00	$0.00	$0.00
Five	$100.00	$0.00	$0.00
TOTALS:	**$500.00**	**$0.00**	**$0.00**

FINES

No fines have been imposed in this case.

RESTITUTION

No restitution has been imposed for this defendant in this case.

Defendant's Name: GUADRON-RODRIGUEZ, JUAN CARLOS
Case Number: 1:16CR00209

SCHEDULE OF PAYMENTS

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

The special assessment shall be due in full immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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. Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

FILED: August 3, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4449
(1:16-cr-00209-LO-5)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LELIS EZEQUIEL TREMINIO-TOBAR, a/k/a Scooby, a/k/a Decente

Defendant - Appellant

No. 18-4496
(1:16-cr-00209-LO-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JUAN CARLOS GUADRON-RODRIGUEZ

Defendant - Appellant

No. 18-4509
(1:16-cr-00209-LO-8)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ANDRES ALEXANDER VELASQUEZ GUEVARA, a/k/a Pechada

Defendant - Appellant

O R D E R

The court denies the petitions for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petitions for rehearing en banc.

Entered at the direction of the panel: Judge Thacker, Judge Harris, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk