

APPENDICES

8th Circuit Court of Appeals - United States of America v. Julia Lagunas Hernandez, No. 20-1343

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APPENDIX

**8th Circuit Court of Appeals - United States of America v. Julia Lagunas
Hernandez, No. 20-1343**

A - Judgment (June 9, 2021)

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

No: 20-1343

United States of America

Plaintiff - Appellee

v.

Julia Lagunas Hernandez

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cr-00040-RGE-2)

JUDGMENT

Before COLLOTON, WOLLMAN and SHEPHERD, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 09, 2021

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX

**8th Circuit Court of Appeals - United States of America v. Julia Lagunas
Hernandez, No. 20-1343**

B - Panel Decision Affirming District Court Judgment (June 9, 2021)

United States Court of Appeals
For the Eighth Circuit

No. 20-1343

United States of America,

Plaintiff - Appellee,

v.

Julia Lagunas Hernandez,

Defendant - Appellant.

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: January 15, 2021

Filed: June 9, 2021

Before COLLOTON, WOLLMAN, and SHEPHERD, Circuit Judges.

COLLOTON, Circuit Judge.

A jury convicted Julia Lagunas Hernandez of conspiracy to distribute methamphetamine and distribution of methamphetamine. The district court¹

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

sentenced Lagunas to a term of 156 months' imprisonment. Lagunas appeals, arguing that improper prosecutorial argument deprived her of a fair trial, that the district court erred by admitting text messages that were protected by the marital communications privilege, and that the court miscalculated the advisory sentencing guideline range. We conclude that there was no reversible error, and affirm the judgment.

I.

The government's case against Lagunas centered on her role in a drug trafficking trip between California and Iowa. On February 11, 2019, Lagunas met Carlos Rojas Medrano at a train station in Sacramento, California. She arrived with her suitcase and a black duffle bag in which three packages of methamphetamine were separately wrapped in clothing. Medrano testified that Maria Alvarez Murillo, a supplier of methamphetamine and the owner of the nightclub at which Lagunas worked, tasked him with training Lagunas as a drug courier. After meeting in the station, Lagunas and Medrano boarded a train to Omaha, Nebraska.

Shortly before arriving in Omaha, Lagunas sent a text message to a man with the initials R.B., whom she now asserts was her husband. Lagunas requested that R.B. arrange a ride for her to a hotel in Grimes, Iowa. When he did not respond, Lagunas sent another text message stating that she would "catch one here" because she could not "be here with this." R.B. then forwarded the address for the hotel to Lagunas. Lagunas used Medrano's phone to arrange a ride to the hotel in Grimes. R.B. told Lagunas that everything was "gonna get charged to me."

In Grimes, Lagunas checked herself and Medrano into a hotel, and then arranged for Alvaro Melena Melena to arrive and pick up the bag containing methamphetamine. A confidential source informed law enforcement of the upcoming methamphetamine handoff. While Lagunas and Medrano were waiting for Melena to arrive, Medrano became suspicious that the police had the hotel under surveillance,

so Lagunas and Medrano hid the methamphetamine underneath a bed in their hotel room.

Lagunas also sent a text message to R.B. stating she would “call [him] in an hour” because people were coming “[f]or the things.” R.B. responded that he did not “know what [she was] afraid of,” and Lagunas retorted that next time he should “come with [her] and . . . do the deal,” and that she was “risking [her] life.”

When Melena arrived, Medrano and Lagunas removed the methamphetamine from under the bed and gave the packages to Melena. The police arrested Melena after he left the hotel, and the officers seized approximately 3,933 grams of methamphetamine from him. That evening, police officers arrested Lagunas and Medrano.

A grand jury charged Lagunas with one count of conspiracy to distribute fifty grams or more of methamphetamine and one count of distribution of fifty grams or more of methamphetamine. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846. She proceeded to trial, and a jury found her guilty on both counts. The district court denied Lagunas’s motion for new trial based on alleged improper prosecutorial argument and evidentiary issues. At sentencing, in calculating an advisory guideline range, the court rejected Lagunas’s argument for a two-level decrease under USSG § 2D1.1(b)(18) on the ground that she had not truthfully provided the government with all information she had about her offense. *See* USSG § 5C1.2(a)(5). The court then sentenced Lagunas to 156 months’ imprisonment.

II.

Lagunas challenges her conviction on the ground that the prosecution’s statements in rebuttal deprived her of her right to a fair trial. Because Lagunas did not object during trial, we review for plain error. *United States v. Jewell*, 614 F.3d

911, 927 (8th Cir. 2010). To obtain relief on this basis, a defendant must show that the prosecution made improper argument that prejudiced her substantial rights. *United States v. Smith*, 978 F.3d 613, 617-18 (8th Cir. 2020).

Lagunas argues that the prosecution improperly shifted the burden of proof to her by arguing that there was no evidence to support her theory that she could have believed that she was going on a “legitimate business trip.” In rebuttal, however, the prosecution may give a “fair response” to the defense’s attack on the government’s case, *United States v. Flynn*, 196 F.3d 927, 930 (8th Cir. 1999), and “the prosecution is entitled to address whether a particular defense explanation of the evidence raises a reasonable doubt.” *United States v. Kidd*, 963 F.3d 742, 752 (8th Cir. 2020).

Defense counsel’s closing argument urged that the jury should have reasonable doubt because Lagunas might have been duped into believing that she was going on a “work trip.” In rebuttal, the prosecution noted that there was no evidence to support such a theory; in other words, the government argued that the defense theory was speculative and not a reasonable explanation of the evidence in the record. The prosecution then pointed the jury to testimony of a coconspirator and text messages that established Lagunas’s knowledge of the scheme. In context, the prosecution’s argument that there was no evidence to support Lagunas’s theory was a fair response and did not shift the burden of proof. *See United States v. Thompson*, 560 F.3d 745, 750-51 (8th Cir. 2009). The court’s instruction on the burden of proof, and the prosecution’s own reminder to the jury that the burden of proof rested with the government, avoided any potential prejudice. *See United States v. Bentley*, 561 F.3d 803, 810 (8th Cir. 2009); *United States v. Crumley*, 528 F.3d 1053, 1065-66 (8th Cir. 2008).

Lagunas next argues that the prosecution improperly attacked defense counsel by arguing that he was “trying to distract [the jury] from the mountain of evidence against his client,” and that he wanted the jury to “forget” the government’s evidence.

Lagunas likens her case to *United States v. Holmes*, 413 F.3d 770 (8th Cir. 2005), where a divided panel ruled that there was prosecutorial misconduct in closing argument. But unlike in *Holmes*, the prosecutor's statements here did not "suggest fabrication of testimony" or directly attack the integrity of defense counsel. See *Jewell*, 614 F.3d at 928. The argument instead permissibly expressed "disagreement with defense counsel's view" of the evidence. *Id.*; see also *United States v. Papajohn*, 212 F.3d 1112, 1120 (8th Cir. 2000). The prosecution is entitled to "comment on its interpretation of the evidence," *Jewell*, 614 F.3d at 928, and the government's argument here did not exceed the "considerable latitude" available in rebuttal. *United States v. LaFontaine*, 847 F.3d 974, 981 (8th Cir. 2017) (internal quotation omitted).

Lagunas also challenges her conviction on the ground that the district court erroneously admitted text messages between Lagunas and R.B. She asserts that R.B. was her husband, and relies on the marital communications privilege for "private intra-spousal communications." *United States v. Evans*, 966 F.2d 398, 401 (8th Cir. 1992).

Assuming for the sake of analysis that Lagunas did not waive (rather than forfeit) any claim of privilege by failing to object to the introduction of the text messages at trial, see *United States v. Vo*, 413 F.3d 1010, 1017 (9th Cir. 2005), we conclude that there was no error. Lagunas failed to produce evidence showing that she and R.B. were married under the law of any State, so she has not established that the messages were sent during a valid marriage. See *Evans*, 966 F.2d at 401; see also *United States v. Hamilton*, 19 F.3d 350, 354 (7th Cir. 1994). She also waived any privilege when she consented to a search of her phone by police. Lagunas entered a password into her phone and voluntarily granted access to the text messages, so she gave up any right to assert that the communications were confidential. See *Wolfle v. United States*, 291 U.S. 7, 16-17 (1934); *United States v. Hamilton*, 701 F.3d 404, 408-09 (4th Cir. 2012); *United States v. Lilley*, 581 F.2d 182, 189 (8th Cir. 1978).

Given these circumstances, it is unnecessary to address whether the communications also fell within the joint criminal activity exception to the privilege. *See Evans*, 966 F.2d at 400-02; *United States v. Parker*, 834 F.2d 408, 413 (4th Cir. 1987).

III.

Lagunas argues that the court erred at sentencing by miscalculating the advisory guideline range. She contends that the court erred in rejecting her argument for a two-level decrease under USSG § 2D1.1(b)(18). That provision applies where a defendant meets the criteria set forth in USSG § 5C1.2(a) that also govern eligibility for a sentence below a statutory minimum.

The district court found that Lagunas did not qualify for the decrease because she did not show that she “truthfully provided to the Government all information and evidence” that she had “concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.” USSG § 5C1.2(a)(5). Lagunas told the government that she was unaware that she was transporting methamphetamine until Medrano removed the packages from underneath a bed in the hotel room. The court found that it was “simply unbelievable that [she] did not know what she was trafficking.” This finding is amply supported by the record. At trial, Medrano testified that Lagunas knew from the beginning that she was carrying methamphetamine, and that she helped him to hide the drugs in the hotel room. Lagunas’s text messages to R.B., including her expressed concern that she was “risking [her] life” on the trip to Iowa, corroborated Medrano’s account. The court’s credibility findings are virtually unreviewable on appeal, and there was no clear error in denying the two-level decrease.

* * *

The judgment of the district court is affirmed.

APPENDIX

**8th Circuit Court of Appeals - United States of America v. Julia Lagunas
Hernandez, No. 20-1343**

C - Order Appointing Criminal Justice Act Counsel (Feb. 20, 2020)

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

No: 20-1343

United States of America

Appellee

v.

Julia Lagunas Hernandez

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cr-00040-RGE-2)

ORDER

Attorney, Rockne Ole Cole is hereby appointed to represent appellant in this appeal under the Criminal Justice Act. Information regarding the CJA appointment and vouchering process in eVoucher will be emailed to counsel shortly.

February 20, 2020

Order Entered under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX

**Southern District of Iowa - United States of America v. Julia Laguanas
Hernandez, No. 4:19-CR-40**

D - Notice of Appeal (Feb. 18, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,)
) CASE NO. 4:19-CR-40
)
Plaintiff,)
)
v.) NOTICE OF APPEAL
)
)
JULIA LAGUNAS HERNANDEZ,) **IFP STATUS REQUESTED**
)
Defendant.)

Pursuant to Fed. R. App. Proc. 4. (b) (1) (A) (i), Defendant appeals her 156

sentence and judgment, and all adverse rulings and orders entered herein.

Defendant has previously qualified for court appointed counsel, but will be filing a
new updated affidavit since the undersigned was privately retained.

RESPECTFULLY SUBMITTED,

/s/ Rockne Cole

ROCKNE O. COLE
Cole Law Firm, PC
209 E. Washington, Ste. 304
Iowa City, IA 52240
(319)519-2540
(319)359-4009 **FAX**
rocknecole@gmail.com
Iowa Pin AT1675
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2020, I electronically filed the foregoing with
the Clerk of the Court using the ECF system which will send notification of such
filing to the parties or attorneys of record.

/s/ Rockne Cole

APPENDIX

**Southern District of Iowa - United States of America v. Julia Laguanas
Hernandez, No. 4:19-CR-40**

E - Judgment (Feb. 5, 2020)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

JULIA LAGUNAS HERNANDEZ

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:19-CR-00040-002

USM Number: 19016-030

Rockne Cole

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

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

☒ was found guilty on count(s) One and Two of the Superseding Indictment filed on March 19, 2019.
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846	Conspiracy to Distribute 50 Grams or More of Methamphetamine	02/13/2019	One
21 U.S.C. § 841(a)(1), 841(b)(1)(A)	Distribution of 50 Grams or More of Methamphetamine	02/13/2019	Two

☐ See additional count(s) on page 2

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.

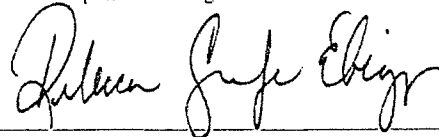
☐ The defendant has been found not guilty on count(s)

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

It is ordered that the defendant must 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.

February 5, 2020

Date of Imposition of Judgment



Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge

Name of Judge

Title of Judge

February 5, 2020

Date

DEFENDANT: JULIA LAGUNAS HERNANDEZ
CASE NUMBER: 4:19-CR-00040-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

156 months as to each of Counts One and Two of the Superseding Indictment filed on March 19, 2019, to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed at a facility as close as possible to the State of California.

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☒ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before _____ on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JULIA LAGUNAS HERNANDEZ

Judgment Page: 3 of 7

CASE NUMBER: 4:19-CR-00040-002

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Five years as to each of Counts One and Two of the Superseding Indictment filed on March 19, 2019, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: JULIA LAGUNAS HERNANDEZ
CASE NUMBER: 4:19-CR-00040-002

Judgment Page: 4 of 7

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JULIA LAGUNAS HERNANDEZ
CASE NUMBER: 4:19-CR-00040-002

Judgment Page: 5 of 7

SPECIAL CONDITIONS OF SUPERVISION

At the completion your term of imprisonment, you must be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, you must not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release will be non-reporting while you are residing outside the United States. If you reenter the United States within the term of supervised release, you must report to the nearest U.S. Probation Office within 72 hours of your arrival.

If not deported, you will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

If not deported, you must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Judgment Page: 6 of 7

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$0.00	\$0.00
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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

DEFENDANT: JULIA LAGUNAS HERNANDEZ
 CASE NUMBER: 4:19-CR-00040-002

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX

**Southern District of Iowa - United States of America v. Julia Laguanas
Hernandez, No. 4:19-CR-40**

F - Order Denying Motion for a New Trial (Nov. 14, 2019)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JULIA LAGUNAS HERNANDEZ, Defendant.	No. 4:19-cr-00040-RGE-CFB-2 ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL
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I. INTRODUCTION

A jury found Defendant Julia Lagunas Hernandez guilty of conspiracy to distribute and distribution of methamphetamine. Lagunas Hernandez moves for a new trial, arguing text messages between her and her husband were impermissibly admitted into evidence and the Government's rebuttal argument was improper. As discussed below, the text messages were not protected by marital communications privilege and therefore were properly admitted. The prosecutor's remarks during rebuttal were not improper; they were responsive to defense counsel's closing argument and did not impugn defense counsel's character. The Court denies Lagunas Hernandez's motion.

II. BACKGROUND

A federal grand jury indicted Julia Lagunas Hernandez with one count of conspiracy to distribute methamphetamine and one count of distribution of methamphetamine. Redacted Superseding Indictment 1-2, ECF No. 43. At trial, Attorney Rockne Cole represented Lagunas Hernandez. Jury Trial Day One Mins., ECF No. 112. Assistant United States Attorneys Mikaela Shotwell and Kristin Herrera represented the Government. *Id.* A cooperating witness testified he and Lagunas Hernandez traveled from Sacramento, California, to Omaha, Nebraska,

by train and then to Grimes, Iowa, by Uber to deliver nine pounds of methamphetamine. *See generally* Jury Trial Tr. 196:19–216:10.¹

On the second day of trial, the Government offered into evidence text messages between Lagunas Hernandez and an individual identified as “RB.” *See* Gov’t’s Ex. 24 at 3, 5–6, ECF No. 127-4 (summary and English translation of extracted text messages); Jury Trial Tr. 244:9–15. Law enforcement extracted these text messages from Lagunas Hernandez’s phone. *See* Jury Trial Tr. 232:15–233:18. Lagunas Hernandez consented to law enforcement’s search of her cell phone shortly after she was apprehended with nine pounds of methamphetamine in a hotel room in Grimes, Iowa. *Id.* 156:16–21.

With no objection from Lagunas Hernandez, the Court admitted the summary of the text messages extracted from Lagunas Hernandez’s phone. *Id.* 244:9–15. Special Agent Brandon West testified that based on his review of the text messages, he concluded RB was Lagunas Hernandez’s “boyfriend or husband.” *Id.* 247:5–7. He noted the text messages between Lagunas Hernandez and RB were “of a personal nature,” discussed “taking care of the kids,” and included expressions of love. *Id.* 247:8–11. The text messages also included a request from Lagunas Hernandez for RB to order her an Uber when she arrived at the train station in Omaha. Gov’t’s Ex. 24 at 3, ECF No. 127-4. RB responded by text with the address of a hotel in Grimes, Iowa. *Id.* After Lagunas Hernandez arrived at the hotel, she texted RB and told him someone would be arriving for the “things.” *Id.* at 5. Lagunas Hernandez also texted RB about the stress she was under—describing it as “risking her life”—and told him that next time he would have to come with her. *Id.* at 5–6.

¹ The trial transcript is consecutively paginated across two volumes: Volume 1, ECF No. 145, comprises pages 1–173 of the transcript; and Volume 2, ECF No. 146, comprises pages 174–352. The Court cites to the transcript by page number without reference to the volume number or ECF number.

The prosecutors used the terms boyfriend and husband interchangeably when describing Lagunas Hernandez's relationship with RB throughout the trial. *See, e.g.*, Jury Trial Tr. 253:8–10, 301:25–302:1 (referring to RB as Lagunas Hernandez's "boyfriend or husband"); *id.* 23:11–16, 25:15–18, 306:3–4, 336:14–16, (referring to RB as Lagunas Hernandez's "boyfriend"); *id.* 299:13–17, 300:21–22, 301:19–21, 304:20–22, 305:20–21 (referring to RB as Lagunas Hernandez's "husband").

Defense counsel described RB as Lagunas Hernandez's husband throughout trial. *Id.* 59:18–19, 83:7–8, 320:9–13, 326:5–6. Lagunas Hernandez did not object to the Government's characterization of her relationship. She also did not offer evidence to establish her relationship with RB—either during or after the trial.

During closing argument, defense counsel argued the Government failed to prove Lagunas Hernandez knowingly entered a conspiracy to distribute methamphetamine. Defense counsel focused on the Government's cooperating witness, arguing he was not credible. *See generally id.* 315:25–335:13. The cooperating witness testified he had trafficked drugs in the past and had discussed the details of the trip with Lagunas Hernandez the day before they left for Iowa. *Id.* 200:8–201:12. During closing argument, defense counsel emphasized the cooperating witness lied to law enforcement after he was arrested and until he agreed to cooperate with the Government. *Id.* 318:19–320:24. Defense counsel concluded the cooperating witness will "say anything to save himself." *Id.* 320:23–24. Defense counsel told the jury that understanding the meaning of reasonable doubt "is critical as you consider whether you're going to depend and whether you're going to trust [the cooperating witness] to make one of the most important decisions in [Lagunas Hernandez's] life." *Id.* 325:9–12. Finally, defense counsel asked the jury if a reasonable person could trust the cooperating witness and then answered: "Absolutely not, absolutely not." *Id.* 325:25–326:2.

During rebuttal, the prosecutor responded to Defense counsel's argument as follows:

Now, Mr. Cole wants to make this case all about whether you believe [the cooperating witness]. That is a distraction. By making this case all about [the cooperating witness], he is trying to distract you from the mountain of evidence against his client. He wants you to forget that she was the one who bought the train ticket. He wants you to forget that she was the one who paid for the Uber. He wants you to forget that she was the one that carried the bag full of nine pounds of methamphetamine across the country. He wants you to forget that she was the one who rented that hotel room. He wants you to forget that she is the one who had all of the contact with the customer. He wants you to forget that she was the one that handed over the bag of drugs in the hotel room. He wants you to forget that she was the one who took the drugs out of the bag and helped hide them in that hotel room. He wants you to forget about all of those incriminating text messages. He wants you to forget all of these things because he wants you to forget that his client is guilty.

Id. 338:11–339:3.

Defense counsel did not object to these statements. The jury deliberated for thirty-eight minutes and returned a verdict of guilty on both counts. Jury Trial Day Two Mins., ECF No. 116; Jury Verdict, ECF No. 119.

Now before the Court is Lagunas Hernandez's Motion for a New Trial. ECF No. 138. Lagunas Hernandez raises two grounds for a new trial: 1) the erroneous admission of the text messages protected by marital communications privilege; and 2) prosecutorial misconduct during rebuttal argument. *Id.* at 1. The Government resists Lagunas Hernandez's motion. Gov't's Resist. Def.'s Mot. New Trial, ECF No. 147. Additional facts are discussed below as necessary.

III. LEGAL STANDARD

Under Federal Rule of Criminal Procedure 33(a), a court may grant a defendant's request for a new trial "if the interest of justice so requires." The Court has broad discretion to consider a defendant's motion for new trial. *See United States v. Dodd*, 391 F.3d 930, 934 (8th Cir. 2004).

However, the authority to grant a new trial must be exercised “sparingly and with caution.” *Id.* (quoting *United States v. Campos*, 306 F.3d 577, 579 (8th Cir. 2002)).

When a motion for a new trial is based on an improper evidentiary ruling, a new trial is warranted if the district court erred in admitting evidence and the error had a substantial influence on the jury’s verdict. *United States v. Oleson*, 310 F.3d 1085, 1091 (8th Cir. 2002). When a motion for a new trial is based on prosecutorial misconduct in closing arguments, a new trial is required only if the prosecutor’s remarks were improper and prejudiced the defendant’s right to a fair trial. *United States v. Davis*, 417 F.3d 909, 911 (8th Cir. 2005). In determining whether the remarks prejudiced the defendant, a court considers the presence of a curative instruction, the strength of the government’s case, and the cumulative effect of the prosecutor’s remarks. *Id.* at 911–12. “The facts of each case must be examined independently to determine if the prosecutor’s remarks were unduly prejudicial to the defendant.” *United States v. Johnson*, 968 F.2d 768, 770 (8th Cir. 1992).

IV. DISCUSSION

For the reasons explained below, Lagunas Hernandez’s motion for a new trial is denied. The text messages between Lagunas Hernandez and RB were not admitted in error. Lagunas Hernandez waived her right to assert marital communications privilege over them. But even if she had not, marital communications privilege would not apply because the text messages discussed joint criminal activity. The prosecutor’s comments were not improper. And considering the strength of the Government’s case against Lagunas Hernandez, even if they were improper, the remarks did not prejudice Lagunas Hernandez’s right to a fair trial.

A. The Text Messages Were Properly Admitted

Lagunas Hernandez contends her text messages with RB were protected by marital communications privilege and were erroneously admitted into evidence. ECF No. 138 at 2–5;

see also Fed. R. Evid. 501 (providing common law governs claims of privilege). Under this rule, statements privately communicated between spouses during their marriage may not be admitted at trial. *United States v. Jackson*, 939 F.2d 625, 626 (8th Cir. 1991). This privilege extends only to communications made when the marriage is valid under state law. *United States v. Evans*, 966 F.2d 398, 401 (8th Cir. 1992). Communications between spouses regarding joint criminal activity, however, are not protected. *Id.* Further, “[t]he confidential communications privilege is waived, by definition, when the allegedly confidential communication is disclosed by the spouse claiming the privilege because the communications are no longer confidential.” *United States v. Lilley*, 581 F.2d 182, 189 (8th Cir. 1978). Other circuits have concluded the privilege is waived when the party-spouse fails to object to pretrial testimony of confidential communications. *United States v. Brock*, 724 F.3d 817, 821 (7th Cir. 2013) (collecting cases).

The legal status of Lagunas Hernandez and RB’s relationship is unknown. At trial, defense counsel referred to RB as Lagunas Hernandez’s husband, but no evidence was presented to establish their relationship. Lagunas Hernandez asserted in her motion for a new trial that she would present her marriage certificate. ECF No. 138 at 4. She has not done so.

Ultimately, the legal status of Lagunas Hernandez’s relationship is irrelevant. Lagunas Hernandez has waived any right to assert marital communications privilege over the text messages that she would have if she is legally married to RB. Moreover, the privilege cannot be asserted over communications pertaining to a joint criminal enterprise.

Lagunas Hernandez allowed the disclosure of her text messages before trial began. After she was arrested, Lagunas Hernandez consented to law enforcement’s search of her phone. Jury Trial Tr. 156:16–21. Before trial, Lagunas Hernandez moved to exclude the testimony of certain co-defendants, but not the evidence extracted from her phone. Def.’s Mot. Limine, ECF. No. 96.

At trial, Lagunas Hernandez’s text messages were central to the Government’s case. The

prosecutors referenced the text messages during opening statements, the examination of witnesses, and closing arguments. *See, e.g.*, Jury Trial Tr. 23:11–16, 244:17–247:11, 299:13–17, 301:19–21. Lagunas Hernandez did not object to the introduction of the text messages at trial. *Id.* 244:9–15. Lagunas Hernandez contends she “did not see this as [an] issue prior to trial.” ECF No. 138 at 5. Even so, Lagunas Hernandez had the opportunity to object to their admission at several points throughout trial—as well as before trial—and failed to do so.

Although the Government presented the text messages at trial, Lagunas Hernandez permitted their disclosure by consenting to law enforcement’s search of her phone and failing to object to the introduction of the text messages both before and during trial. Lagunas Hernandez’s consent for law enforcement to search her phone and her lack of objection destroyed the confidentiality of the text messages. *See Brock*, 724 F.3d at 821; *Lilley*, 581 F.2d at 189. Lagunas Hernandez waived her right to assert marital communications privilege.

But even if Lagunas Hernandez had not waived her right to assert privilege, the text messages were admissible under the joint criminal enterprise exception to marital communications privilege. *See Evans*, 966 F.2d at 401. The text messages reveal RB’s participation in Lagunas Hernandez’s drug trafficking activity. For example, Lagunas Hernandez sent a text asking RB to request an Uber for her when she arrived at the Amtrak station in Omaha with a supply of methamphetamine. Gov’t’s Ex. 24 at 3, ECF No. 127-4 at 3. RB also sent Lagunas Hernandez the address of the hotel in Grimes, where she eventually distributed the methamphetamine. *Id.* When Lagunas Hernandez was on her way to the hotel, RB sent her a message confirming that the expenses would be charged to him. *Id.* Lagunas Hernandez also sent messages to RB expressing her stress and fear about making the trip and telling RB he must come with her next time. *Id.* at 5–6.

By sending her the information about the hotel and confirming that he would pay for all the

expenses, RB knowingly assisted Lagunas Hernandez in her conspiracy to distribute and distribution of methamphetamine. Even though RB was not indicted as a co-conspirator, his assistance to Lagunas Hernandez by text message indicates his participation in the ongoing crime. *See United States v. Hill*, 967 F.2d 902, 912 (3d Cir. 1992). Marital communications privilege cannot be asserted over conversations of joint criminal activity. Lagunas Hernandez was correct not to object to the admission of these text messages. Such an objection would have been overruled.

The text messages between Lagunas Hernandez and RB were not admitted in error. A new trial is not warranted on this ground.

B. Prosecutor's Remarks During Rebuttal Argument Were Not Improper

Although a prosecutor “may strike hard blows, he is not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 88 (1935). Comments during closing argument that impugn defense counsel’s character are improper. *United States v. Holmes*, 413 F.3d 770, 775 (8th Cir. 2005). “[P]ersonal, unsubstantiated attacks on the character and ethics of opposing counsel have no place in the trial of any criminal or civil case.” *Id.* “[P]rosecutors may not inject their own testimony nor cast aspersions upon the defendant through offhand comments, suggestions of conspiracy with defense counsel, nor personal attacks upon the integrity of defense counsel.” *Id.*

Lagunas Hernandez argues the prosecutor’s comments during rebuttal argument were improper. She analogizes the prosecutor’s statements to those found to be improper in *Holmes*. *See* 413 F.3d at 775. The prosecutor in *Holmes* told the jury during rebuttal that the defense attorney “wants to distract you and tell you about all this other evidence that’s not important.” *Id.* The prosecutor in *Holmes* also described some issues the defense attorney raised during his closing argument as a “red herring” and told the jury that the defense attorney needed to “get his stories straight.” *Id.* In *Holmes*, the Eighth Circuit held the prosecutor’s comments “taken as a whole and

in the context of the rebuttal argument, show that the government attorney was accusing defense counsel of conspiring with the defendant to fabricate testimony.” *Id.* The Court concluded the comments “in the context of the trial as a whole, could reasonably have affected the jury’s verdict.” *Id.* at 776.

On their face, the comments at issue are similar to the comments in *Holmes*. Here, the prosecutor told the jury that defense counsel “wants you to forget” the evidence the Government presented inculcating Lagunas Hernandez. Jury Trial Tr. 338:11–339:3. Nonetheless, the prosecutor’s remarks—even if superficially similar—are not comparable to those in *Holmes*. In *Holmes*, the Eighth Circuit concluded the prosecutor’s comments amounted to an accusation that the defense attorney conspired with the defendant to fabricate evidence. 413 F.3d at 775. No one could draw such an inference from the comments at issue here.

The prosecutor’s remarks were in response to defense counsel’s effort to draw the jury’s focus to the credibility of the cooperating witness and away from the inculpatory evidence against Lagunas Hernandez. The prosecutor framed her summation of the Government’s evidence against Lagunas Hernandez as evidence defense counsel “wants you to forget.” *See* Jury Trial Tr. 338:11–339:3. The remarks were not a personal attack on defense counsel’s character. *See United States v. Patterson*, 684 F.3d 794, 799 (8th Cir. 2012) (holding prosecutor’s comments, taken in context, about the defense attorney attempting to confuse the jury did not disparage the defense attorney but distinguished the defense attorney’s argument from the “uncontroverted facts of the case”). Instead, the prosecutor’s remarks were a permissible response to defense counsel’s argument and an attempt to focus the jury’s attention back to the evidence presented against Lagunas Hernandez. *See United States v. Jewell*, 614 F.3d 911, 928 (8th Cir. 2010) (“It is not improper for the government to comment on its interpretation of the evidence.”); *see also United States v. Darden*, 688 F.3d 382, 390 (8th Cir. 2012) (holding

prosecutor's challenged remarks were not prejudicial in part because they were invited by defense counsel's attempt to discredit government witnesses).

During rebuttal, a prosecutor should focus on the strength of the Government's case. Any argument focusing instead on defense counsel's strategy is ill-advised. But here, the prosecutor's rhetoric responded directly to defense counsel's argument. The remarks were not improper.

Even if the prosecutor's remarks were improper, they did not prejudice Lagunas Hernandez's right to a fair trial. In determining whether a defendant's rights were prejudiced by a prosecutor's improper statements, a court considers the presence of curative instructions, the strength of the government's case, and the cumulative effect of the remarks. *Davis*, 417 F.3d at 911–12; *Johnson*, 968 F.2d at 771.

Because Lagunas Hernandez did not object to the prosecutor's remarks at trial, no curative instruction was given. Before closing arguments began, however, the Court admonished the jury that closing arguments are not evidence and should not be considered as evidence. Jury Trial Tr. 296:19–24. The Court included the same warning in the written jury instructions. Final Jury Instructions 4, ECF No. 122. Although these instructions were not specifically intended to mitigate the effect of the prosecutor's remarks, they likely reduced any potential impact of the comments on the jury's verdict.

The Government presented substantial evidence against Lagunas Hernandez—much of which was summarized in the prosecutor's comments at issue. The evidence included text messages and calls between Lagunas Hernandez and co-conspirators as well as witness testimony from co-conspirators. The evidence was not so thin that the prosecutor's remarks would have “divert[ed the jury's] attention away from its task to weigh the evidence and submit a reasoned decision.” *Johnson*, 968 F.2d at 772 (quoting *United States v. Solivan*, 937 F.2d 1146, 1153 (6th Cir. 1991)). Finally, “[t]he prosecutor's remarks in rebuttal must be viewed in their context.”

Davis, 417 F.3d 909, 912. The prosecutor began her rebuttal argument by reminding the jury of the Government's burden of proof and noting "[t]he defendant doesn't have to prove anything in this case." Jury Trial Tr. 335:16–21. These remarks about the Government's burden—coupled with the overall strength of the Government's case—mitigate any potential effect of the remarks at issue on the jury's verdict. Lagunas Hernandez's right to a fair trial was not prejudiced. Her motion for a new trial is denied on this ground.

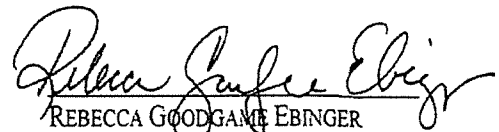
V. CONCLUSION

Text messages between Lagunas Hernandez and RB were not protected by marital communications privilege. Lagunas Hernandez waived her right to assert marital communications privilege over the text messages. Even if she had not waived her right, the text messages were not privileged because they contained discussion of joint criminal activity. The prosecutor's remarks during closing argument about the defense attorney's strategy were not improper. But even if they were improper, in light of the overall strength of the Government's case, the remarks did not prejudice Lagunas Hernandez's right to a fair trial. The Court denies Lagunas Hernandez's motion for a new trial.

IT IS ORDERED that Defendant Julia Lagunas Hernandez's Motion for a New Trial, ECF No. 138, is **DENIED**.

IT IS SO ORDERED.

Dated this 14th day of November, 2019.


REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE

APPENDIX

**Southern District of Iowa - United States of America v. Julia Laguanas
Hernandez, No. 4:19-CR-40**

G - Verdict (Sept. 4, 2019)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JULIA LAGUNAS HERNANDEZ, Defendant.	No. 4:19-cr-00040-RGE-CFB-2 VERDICT FORM
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COUNT 1 – Conspiracy to Distribute Methamphetamine

With regard to the crime of conspiring to distribute methamphetamine, as charged in Count 1 of the Indictment, we, the jury, find the defendant, **Julia Lagunas Hernandez**:

____ NOT GUILTY

X GUILTY

NOTE: If you found the defendant guilty of Count 1 of the Indictment, you must answer Interrogatory #1 on the next page. If you find the defendant not guilty of Count 1, do not answer Interrogatory #1 and proceed to the Verdict for Count 2, on page 3 of this Verdict Form.

Interrogatory #1: We, the jury, find beyond a reasonable doubt, that the amount of

methamphetamine that the defendant conspired to distribute was;

X 50 grams or more of methamphetamine;

_____ 5 grams or more but less than 50 grams of methamphetamine; or

_____ some amount of methamphetamine.

COUNT 2 – Distribution of Methamphetamine

With regard to the crime of distribution of methamphetamine, as charged in Count 2 of the Indictment, we, the jury, find the defendant. **Julia Lagunas Hernandez**:

____ NOT GUILTY

X GUILTY

NOTE: If you found the defendant guilty of Count 2 of the Indictment, you must answer Interrogatory #2. If you find the defendant not guilty of Count 2, do not answer Interrogatory #2.

Interrogatory #2: We, the jury, find beyond a reasonable doubt, that the amount of methamphetamine that the defendant distributed was:

X 50 grams or more of methamphetamine;

____ 5 grams or more but less than 50 grams of methamphetamine; or

____ some amount of methamphetamine.

9/04/2019
DATE
4:36 pm

[REDACTED]

JURY FOREPERSON

APPENDIX

**Southern District of Iowa - United States of America v. Julia Laguanas
Hernandez, No. 4:19-CR-40**

H - Indictment (Feb. 21, 2019)

RECEIVED

FEB 21 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)	Criminal No. 4:19-CR-40
)	
v.)	<u>INDICTMENT</u>
)	
ALVARO MELENA MELENA,)	T. 18 U.S.C. § 2
JULIA LAGUNAS HERNANDEZ, and)	T. 21 U.S.C. § 841(a)(1)
CARLOS NOEL ROJAS MEDRANO,)	T. 21 U.S.C. § 841(b)(1)(A)
)	T. 21 U.S.C. § 846
Defendants.)	T. 21 U.S.C. § 853
)	

THE GRAND JURY CHARGES:

COUNT 1
(Conspiracy to Distribute Methamphetamine)

From a date unknown, but at least as early as October 2018, until February 13, 2019, in the Southern District of Iowa and elsewhere, the defendants, ALVARO MELENA MELENA, JULIA LAGUNAS HERNANDEZ, and CARLOS NOEL ROJAS MEDRANO, did knowingly and intentionally conspire, with each other and with other persons known and unknown to the Grand Jury, to distribute methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

The amount of methamphetamine involved and reasonably foreseeable to each defendant was at least 50 grams of methamphetamine and at least 500 grams of a mixture or substance containing a detectable amount of methamphetamine.

This is a violation of Title 21, United States Code, Sections 846 and 841(b)(1)(A).

THE GRAND JURY FURTHER CHARGES:

COUNT 2
(Distribution of Methamphetamine)

On or about February 13, 2019, in the Southern District of Iowa, the defendants, JULIA LAGUNAS HERNANDEZ and CARLOS NOEL ROJAS MEDRANO, did knowingly and intentionally distribute at least 50 grams of methamphetamine and at least 500 grams of a mixture or substance containing methamphetamine, a Schedule II controlled substance, and aided and abetted the same.

This is a violation of Title 21, United States Code, Section 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.

THE GRAND JURY FURTHER CHARGES:

COUNT 3
(Possession with Intent to Distribute Methamphetamine)

On or about February 13, 2019, in the Southern District of Iowa, the defendant, ALVARO MELENA MELENA, did knowingly and intentionally possess with intent to distribute at least 50 grams of methamphetamine and at least 500 grams of a mixture or substance containing methamphetamine, a Schedule II controlled substance.

This is a violation of Title 21, United States Code, Section 841(a)(1) and 841(b)(1)(A).

THE GRAND JURY FINDS:

NOTICE OF FORFEITURE

The allegations contained in Counts 1 through 3 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture, pursuant to the provisions of Title 21, United States Code, Section 853.

Pursuant to Title 21, United States Code, Section 853, upon conviction of an offense in violation of Title 21, United States Code, as set forth in Counts 1 and/or 3 of this Indictment, the defendant, ALVARO MELENA MELENA, shall forfeit to the United States of America any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of an offense alleged in the Counts listed above in this Indictment; and any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of an offense alleged in the Counts listed above in this Indictment. This property includes the following:

- a. Approximately \$4,083 in U.S. currency;
- b. A loaded, Colt Government Model 1911, .38 caliber handgun, serial number 2838032;
- c. A loaded, Ruger Model SpeedSix, .357 caliber magnum handgun, serial number 150-54401;
- d. A loaded, Ruger Model SR-9, nine millimeter handgun, serial number 335-18300;
- e. A Colt Model Commander, .45 caliber handgun, serial number CJ46406;
- f. A Century Arms Model VZ2008 Sporter, 7.62mm x 39mm rifle, serial number VZ08PM-000326;
- g. A GSG Model GSG-S22, .22 caliber LR rifle, serial number A547309;
- h. A Ruger Model Ranch Rifle, .223 caliber rifle, serial number NRA800023;
- i. A Ruger Model Ranch Rifle, 7.62x39mm rifle, serial number S83-01097;

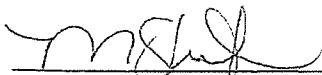
j. A Bushmaster Model Carbon 15, .223 caliber rifle, serial number CBC067670; and
k. A Marlin (Glenfield) Model 60, .22 caliber LR rifle, bearing serial number 19527512,
all of which were seized from the residence of 1719 Lucinda Street, Perry, Iowa, on or about
October 11, 2018.

A TRUE BILL.

FOREPERSON

Marc Krickbaum
United States Attorney

By:



Mikaela J. Shotwell
Kristin M. Herrera
Assistant United States Attorneys

