

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAFAEL VILLANUEVA – PETITIONER

v.

UNITED STATES OF AMERICA – RESPONDENT

APPENDICES

FROM THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

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A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 7, 2022

Lyle W. Cayce
Clerk

No. 21-40356

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RAFAEL VILLANUEVA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:17-CR-508-1

Before JONES, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

A jury convicted Rafael Villanueva of six counts relating to drug trafficking and money laundering, and the district court imposed concurrent sentences that included terms of imprisonment for life. On appeal, Villanueva challenges the district court's finding him competent to stand trial and its evidentiary ruling barring him from presenting evidence and argument

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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related to his intervening stroke and purported memory loss. He also challenges the constitutionality of the statutes of conviction and renews his objection to a jury instruction as well as several sentencing objections. For the following reasons, we affirm.

In Villanueva’s view, the district court erred in finding him competent because loss of memory undermined his ability to testify or otherwise to assist his counsel in contesting the Government’s case. In reviewing competency determinations, we “re-analyze the facts and take a hard look at the trial judge’s ultimate conclusion,” which we leave undisturbed “unless it is clearly arbitrary or unwarranted.” *United States v. Doke*, 171 F.3d 240, 247 (5th Cir. 1999) (citation and internal quotations omitted). The standard for competency is “whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960); accord *Drope v. Missouri*, 420 U.S. 162 (1975). Based on our review of the record, including the nature of the evidence against Villanueva and expert evaluations that undermine his claims of memory loss, the district court’s determination of competence was not clearly arbitrary or unwarranted.

Villanueva also contends that the district court erred by granting a motion in limine that largely barred him from presenting evidence about the stroke and its effect on his memory—a ruling we review for abuse of discretion and harmless error. *See United States v. Clark*, 577 F.3d 273, 287 (5th Cir. 2009). In this instance, even assuming error, relief is unwarranted because there is not a reasonable probability that the exclusion of evidence contributed to the verdicts, given the ample evidence of guilt predating the stroke.

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Relatedly, Villanueva argues that the district court erred by not permitting him to address his stroke and memory loss while cross-examining witnesses or in closing argument. The first of these claims is unavailing because Villanueva does not demonstrate that the restrictions on cross-examination violated his confrontation right or were clearly prejudicial. *See United States v. Skelton*, 514 F.3d 433, 438–40 (5th Cir. 2008). As for closing argument, a presiding judge has broad discretion in limiting its scope to ensure “that argument does not stray unduly from the mark.” *Herring v. New York*, 422 U.S. 853, 862 (1975). And because no evidence of memory loss was adduced during trial, Villanueva had no basis for addressing the subject in his closing. *See United States v. Dorr*, 636 F.2d 117, 120 (5th Cir. 1981) (“The sole purpose of closing argument is to assist the jury in analyzing, evaluating and applying the evidence.”).

Next, Villanueva challenges the constitutionality of the statutes under which he was convicted. He acknowledges that his challenge to the Controlled Substances Act (CSA) is foreclosed by *Gonzales v. Raich*, 545 U.S. 1 (2005), but argues *Gonzales* was wrongly decided. To the extent Villanueva is asking this court to disregard Supreme Court precedent, we must refuse that request. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982). His challenges to statutes other than the CSA are not considered because he failed to brief them. *See United States v. Scroggins*, 599 F.3d 433, 446–47 (5th Cir. 2010).

Villanueva contends that it was error for the district court to instruct jurors that they must accept the law as explained to them by the court. We have held that “a district court does not err by giving a charge that tracks this Circuit’s pattern jury instructions and that is a correct statement of the law.” *United States v. Richardson*, 676 F.3d 491, 507 (5th Cir. 2012). As the instruction at issue met those criteria, we conclude it was not erroneous.

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While Villanueva also asserts that the district court erred by overruling various sentencing objections, insufficient briefing as to most of these issues precludes our review. *See Scroggins*, 599 F.3d at 446-47. To the extent he contends that sentencing determinations should have been made by the jury, he is correct in conceding that his arguments are foreclosed.

AFFIRMED.

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Holding Session in Brownsville

ENTERED

May 07, 2021

Nathan Ochsner, Clerk

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

RAFAEL VILLANUEVA

CASE NUMBER: 1:17CR00508-001

USM NUMBER: 28796-479

Edward A. Stapleton III and Nathaniel C. Perez, Jr.
Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1, 2, 3, 4, 5, and 6 on January 28, 2020.
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)	Conspiracy to Possess With Intent to Distribute a Quantity Exceeding Five (5) Kilograms of Cocaine	07/31/2017	1
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 18 U.S.C. § 2	Possession With Intent to Distribute a Quantity Exceeding Five (5) Kilograms of Cocaine	07/31/2017	2
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 18 U.S.C. § 2	Possession With Intent to Distribute a Quantity Exceeding Five (5) Kilograms of Cocaine	07/31/2017	3

☒ See Additional Counts of Conviction.

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) _____ 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.

April 29, 2021

Date of Imposition of Judgment

Fernando Rodriguez, Jr.

Signature of Judge

FERNANDO RODRIGUEZ, JR.
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

May 7, 2021

Date

DEFENDANT: RAFAEL VILLANUEVA
CASE NUMBER: 1:17CR00508-001

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1956(h)	Conspiracy to Launder Monetary Instruments	07/31/2017	4
31 U.S.C. §§ 5332(a)(1) and (b), and 18 U.S.C. § 2	Bulk Cash Smuggling	07/31/2017	5
18 U.S.C. §§ 1956(a)(2)(B)(i) and 2	International Laundering of Monetary Instruments, that is, Approximately \$297,230.00, From the United States to Mexico	07/31/2017	6

DEFENDANT: **RAFAEL VILLANUEVA**
CASE NUMBER: **1:17CR00508-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: Life.

This term consists of Life as to each of Counts 1, 2, and 3; 240 months as to each of Counts 4 and 6; and 60 months as to Count 5, to be served concurrently with each other, for a total of LIFE.

- ☐ See Additional Imprisonment Terms.
- ☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant be placed in a facility that can attend to his medical needs.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ 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 2 p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **RAFAEL VILLANUEVA**
CASE NUMBER: **1:17CR00508-001**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 5 years

This term consists of five (5) years as to each of Counts 1, 2, and 3, and three (3) years as to each of Counts 4, 5, and 6, to be served concurrently with each other, for a total of five (5) years.

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 the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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.

STANDARD CONDITIONS OF SUPERVISION

- ☐ See Special 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.
14. If restitution is ordered, the defendant must make restitution as ordered by the Judge and in accordance with the applicable provisions of 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663A and/or 3664. The defendant must also pay the assessment imposed in accordance with 18 U.S.C. § 3013.
15. The defendant must notify the U.S. Probation Office of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

DEFENDANT: **RAFAEL VILLANUEVA**
CASE NUMBER: **1:17CR00508-001**

SPECIAL CONDITIONS OF SUPERVISION

None.

DEFENDANT: **RAFAEL VILLANUEVA**
 CASE NUMBER: **1:17CR00508-001**

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment¹</u>	<u>JVTA Assessment²</u>
TOTALS	*\$600.00	\$0.00	\$0.00	\$0.00	\$0.00

*A \$100.00 special assessment is ordered as to each of Counts 1, 2, 3, 4, 5, and 6, for a total of \$600.00.

- ☒ See Additional Terms for Criminal Monetary Penalties.
- ☐ 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 Loss³</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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- ☐ See Additional Restitution Payees.

TOTALS

- ☐ 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:
- ☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

³ 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: **RAFAEL VILLANUEVA**
 CASE NUMBER: **1:17CR00508-001**

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$600.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ installments of \$ _____ over a period of _____, to commence _____ after the date of this judgment; or
- D ☐ Payment in equal _____ installments of \$ _____ over a period of _____, to commence _____ after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ 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:
 Payable to: Clerk, U.S. District Court
 Attn: Finance
 600 E. Harrison Street #101
 Brownsville, Texas, 78520-7114

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)	<u>Total Amount</u>	<u>Joint and Several Amount</u>	<u>Corresponding Payee, if appropriate</u>
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- ☐ See Additional Defendants and Co-Defendants Held Joint and Several.
- ☐ 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:
 Upon motion of the Government, the Court accepted and imposed a money judgment in the amount of \$1,193,070.00.

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) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.