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APPENDIX A

Opinion of the Eleventh Circuit Court of Appeals
United States v. Juan Carlos Valles, Jr., No. 22-10069
January 6, 2023

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UNITED STATES OF AMERICA, Plaintiff-Appellee,
v.
JUAN CARLOS VALLES, JR., Defendant-Appellant.

No. 22-10069

United States Court of Appeals, Eleventh Circuit

January 6, 2023

DO NOT PUBLISH

Appeal from the United States District Court for the Northern District of Florida D.C. Docket No. 5:21-cr-00005-TKW-MJF-1

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Before ROSENBAUM, BRASHER, and EDMONDSON, Circuit Judges.

PER CURIAM

Juan Valles appeals his convictions for assault with a dangerous weapon and for possession of contraband in prison. Valles challenges the district court's denial of his motion to dismiss: a motion based on a claim of selective prosecution. No reversible error has been shown; we affirm.

Valles's convictions stem from these events. On 28 December 2020, Valles attacked physically a fellow prisoner (M.L.R.) at the Federal Correctional Institution in Marianna, Florida. During the attack, Valles struck M.L.R. repeatedly using a weapon known as a "slock": a combination lock hidden inside a sock. Valles admits that he assaulted M.L.R. and says he did so in part to protect a vulnerable prisoner from M.L.R.'s abuse. At the time of the attack, Valles had about one month remaining on his sentence.^[1]

A federal grand jury charged Valles with two offenses: (1) assault with a dangerous weapon with intent to do bodily harm, in violation of 18 U.S.C. § 113(a)(3); and (2) possession of contraband in a prison, in violation of 18 U.S.C. § 1791(a)(2) and (b)(3).

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Valles moved to dismiss the indictment on grounds of selective prosecution. Valles asserted that "slock" incidents are typically handled administratively by the Bureau of Prisons ("BOP") instead of being criminally prosecuted. Pertinent to this appeal, Valles alleged he was prosecuted selectively because he was about to be released from custody without supervision.^[2]

The district court denied Valles's motion. The district court determined that Valles had failed to show that he was singled out for prosecution based on a protected classification. In a separate observation, the district court concluded that Valles had also failed to identify a similarly-situated person outside of his supposed classification who was not prosecuted. The district court also said nothing was arbitrary or irrational about the government considering a prisoner's release date in deciding whether to prosecute.

Valles pleaded guilty pursuant to a written plea agreement in which he reserved the right to appeal the district court's denial of his selective-prosecution motion. The district court accepted

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Valles's guilty plea and later sentenced Valles to 60 months' imprisonment.

"In reviewing the denial of a motion to dismiss for selective prosecution, we review the district court's factual findings for clear error and its legal conclusions *de novo*." *United States v. Brantley*, 803 F.3d 1265, 1270 (11th Cir. 2015) (brackets omitted).

Prosecutors are given "broad discretion" in deciding how to enforce the United States Criminal Code. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996) ("[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."). Given this broad discretion, we presume that a prosecutor has discharged properly his official duties, absent "clear evidence to the contrary." *See id.* A prosecutor, however, is still "subject to constitutional constraints," including those "imposed by the equal protection component of the Due Process Clause of the Fifth Amendment." *Id.* Under that clause, "the decision whether to prosecute may not be based on 'an unjustifiable standard such as race, religion, or other arbitrary classification.' *Id.*

A defendant asserting a selective-prosecution claim bears a "demanding" burden. *United States v. Smith*, 231 F.3d 800, 807 (11th Cir. 2000). The defendant must show -- by "clear evidence" -- that "the federal prosecutorial policy had a discriminatory effect and that it was motivated by a discriminatory purpose." *Id.* at 80708 (emphasis in original) (quotation omitted).

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A defendant demonstrates discriminatory effect by showing that "similarly situated individuals" outside the defendant's constitutionally-protected classification were not prosecuted. *See United States v. Jordan*, 635 F.3d 1181, 1188 (11th Cir. 2011). A person is "similarly situated" if he "engaged in the same type of conduct" as the defendant and if the evidence against him "was as strong or stronger" than the evidence against the defendant. *Id.* To establish discriminatory purpose, a defendant must show he was prosecuted "because of, not merely in spite of its adverse effects upon an identifiable group." *Id.* (quotations omitted).

The district court committed no error in denying Valles's motion to dismiss based on

selective prosecution. Never has Valles alleged that he was prosecuted based on a constitutionally-protected classification such as race, religion, or sex. Valles argues, instead, that he was prosecuted based on the proximity of his prison release date.

Even to the extent the government considered Valles's release date in making its prosecutorial decision, we cannot conclude that doing so was impermissibly arbitrary. The government has legitimate reasons for placing a higher priority on prosecuting a prisoner who commits a violent offense near the end of his prison term -- when the BOP has little recourse to impose adequate discipline -- than on prosecuting a prisoner who commits a violent offense earlier in his prison term. We also accept that the threat of prosecution might have a greater deterrent effect on prisoners who (like Valles) are soon-to-be-released than it would on prisoners who

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still face significant prison time. And we have said that "[i]t does not offend the Constitution when a prosecutor considers the potential deterrent effect of a case's prosecution." *See Brantley*, 803 F.3d at 1273.

Valles has also produced no evidence -- let alone "clear evidence" -- showing that the government's decision to prosecute Valles either had a discriminatory effect or was motivated by an unlawful discriminatory purpose. Valles's generalized assertion that "slock" incidents are typically handled internally by the BOP is insufficient by itself to demonstrate discriminatory effect: Valles has identified no "similarly situated" prisoner who was not prosecuted. Valles has failed to satisfy his burden of proving selective prosecution; we affirm the district court's denial of Valles's motion to dismiss.

AFFIRMED.

Notes:

[1] As of December 2020, Valles's projected release date was 29 January 2021.

[2] In his motion, Valles also asserted these other "reasons" for his purported selective prosecution: (1) Valles was a "non-sexual offender" housed at a prison meant to protect sexual offenders, including M.L.R.; and (2) Valles had served several years in sexual-offender prisons and harbored no ill will toward sexual offenders, so his offense was no hate crime. The district court determined that these factual assertions had no "conceivable bearing on his claim of selective prosecution." Valles raises no challenge to the district court's treatment of these "reasons"; we need not address them on appeal.

APPENDIX B

Order Denying Timely-Filed Petition for Rehearing
April 17, 2023

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10069-GG

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUAN CARLOS VALLES, JR.,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Florida

BEFORE: ROSENBAUM, BRASHER, and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is DENIED.

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APPENDIX C

Final Judgment of the Northern District of Florida
December 30, 2021

UNITED STATES DISTRICT COURT

Northern District of Florida

UNITED STATES OF AMERICA

v.

JUAN CARLOS VALLES, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:21cr5-001/TKW

USM Number: 50415-179

Valerie Prevatte, CJA

Defendant's Attorney

THE DEFENDANT:

 pleaded guilty to count(s) 1 and 2 of the Indictment pleaded nolo contendere to count(s) _____ which was accepted by the court. was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 113(a)(3)	Assault with a Dangerous Weapon with Intent to do Bodily Harm,	12/28/2020	1
18 U.S.C. §§ 1791(a)(2) and 1791(b)(3)	Possession of Contraband in a Prison	12/28/2020	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.

12/29/2021
Date of Imposition of Judgment

Signature of Judge

T. Kent Wetherell II., United States District Judge
Name and Title of Judge

Date

12/30/21

DEFENDANT: JUAN CARLOS VALLES, JR.
CASE NUMBER: 5:21cr5-001/TKW

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 60 months as to each count, with concurrent terms.

The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be designated to a Bureau of Prisons facility for confinement where he can be employed through the Bureau of Prison's UNICOR program.

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 _____ 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 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: JUAN CARLOS VALLES, JR.

CASE NUMBER: 5:21cr5-001/TKW

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 3 years as to each count, with concurrent terms.

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.

DEFENDANT: JUAN CARLOS VALLES, JR.
CASE NUMBER: 5:21cr5-001/TKW

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: JUAN CARLOS VALLES, JR.
CASE NUMBER: 5:21cr5-001/TKW

SPECIAL CONDITIONS OF SUPERVISION

You must be evaluated for substance abuse and mental health and referred to treatment as determined necessary through an evaluation process. Treatment is not limited to, but may include, participation in a Cognitive Behavior Therapy program. You will be tested for the presence of illegal controlled substances or alcohol at any time during the term of supervision.

You must be evaluated for anger management and referred to treatment as determined necessary through an evaluation process.

You must provide the probation officer access to any requested financial information, both business and personal. You must not incur new credit charges, or open additional lines of credit without the approval of the probation officer. You must not transfer or dispose of any asset, or your interest in any asset, without the approval of the probation officer. You must pay any unpaid restitution in monthly installment payments, in an amount of \$100 per month, to commence within one month of release from the Bureau of Prisons unless modified by probation officer.

DEFENDANT: JUAN CARLOS VALLES, JR.
CASE NUMBER: 5:21cr5-001/TKW**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 Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$ 3,175.00	\$	\$	\$

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>
FCI Marianna Attn: Trust Fund Department 3625 FCI Rd Marianna, Florida 32446	3,175.00	3,175.00	

TOTALS	\$ <u>3,175.00</u>	\$ <u>3,175.00</u>
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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 fine restitution.

the interest requirement for fine restitution is modified as follows:

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

** 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: JUAN CARLOS VALLES, JR.
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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 \$ 3,375.00 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 _____ (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:
\$3,375.00 is due and payable in full immediately. Any unpaid portion shall be paid in monthly installments of not less than \$100.00 per month towards restitution first and \$20.00 per month towards Special Monetary Assessment to begin within 30 days of release from imprisonment.

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

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