

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DANILO VELASQUEZ—PETITIONER/APPLICANT

VS.

UNITED STATES OF AMERICA—RESPONDENT

APPENDIX IN SUPPORT OF APPLICATION FOR EXTENSION OF TIME IN
WHICH TO FILE PETITION FOR WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Steven S. Lubliner (California State Bar No. 164143)
LAW OFFICES OF STEVEN S. LUBLINER
P.O. Box 750639
Petaluma, CA 94975
E-mail: sslubliner@comcast.net
Phone: (707) 789-0516
Attorney for Petitioner/Applicant Danilo Velasquez

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 16 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-10104

Plaintiff-Appellee,

D.C. No.

v.

3:08-cr-00730-WHA-33

DANILO ARTURO VELASQUEZ,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Submitted August 14, 2023**
San Francisco, California

Before: CALLAHAN and BADE, Circuit Judges, and ANTOON,** District
Judge.

Danilo Arturo Velasquez appeals the district court’s judgment reimposing a
life sentence after vacatur of one of Velasquez’s four convictions on RICO-related

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable John Antoon II, United States District Judge for the
Middle District of Florida, sitting by designation.

charges. We have jurisdiction under 28 U.S.C. § 1291, and we affirm in all respects.

1. “We review for abuse of discretion a district court’s denial of a motion to unseal, reversing only if the denial was ‘illogical, implausible, or without support in inferences that may be drawn from the facts in the record.’” *United States v. Perez*, 962 F.3d 420, 434 (9th Cir. 2020) (footnote and citations omitted) (quoting *United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc)). Here, the district court acted well within its discretion when it denied Velasquez’s request for “attorney’s eyes only” access to the sealed resentencing transcript of a codefendant after weighing counsel’s asserted need for the transcript against the reasons the transcript was sealed.¹ And having conducted an *in camera* review of the sealed transcript as requested by Velasquez, we find that any error in denying access was indeed harmless.

2. “We review the substantive reasonableness of a sentence imposed by the district court ‘under an abuse-of-discretion standard,’ ‘and will provide relief only in rare cases.’” *United States v. Wilson*, 8 F.4th 970, 977 (9th Cir. 2021) (per curiam) (citations omitted) (first quoting *Gall v. United States*, 552 U.S. 38, 51 (2007); and then quoting *United States v. Ressay*, 679 F.3d 1069, 1088 (9th Cir.

¹ We would reach the same conclusion under Velasquez’s proposed “special need” standard.

2012) (en banc)). Velasquez argues that the reimposed life sentence is substantively unreasonable because it resulted in an unwarranted disparity between his sentence and those of several of his coparticipants. We find no abuse of discretion. The district court duly considered Velasquez's sentencing-disparity argument and found it unpersuasive after rationally and meaningfully evaluating the 18 U.S.C. § 3553(a) factors, including the unique characteristics of Velasquez and his coparticipants and the nature and circumstances of their conduct. The court did not penalize Velasquez for exercising his Fifth Amendment right to trial and appeal rather than entering a guilty plea like some of his coparticipants.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 30 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DANILO ARTURO VELASQUEZ,

Defendant-Appellant.

No. 22-10104

D.C. No.

3:08-cr-00730-WHA-33

Northern District of California,

San Francisco

ORDER

Before: CALLAHAN and BADE, Circuit Judges, and ANTOON,* District Judge.

The panel has voted to deny the petition for rehearing. Judge Callahan and Judge Bade vote to deny the petition for rehearing en banc and Judge Antoon so recommends. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

* The Honorable John Antoon II, United States District Judge for the Middle District of Florida, sitting by designation.

AO 245C (Rev. AO 09/19-CAN 12/19) Amended Judgment in Criminal Case

**UNITED STATES DISTRICT COURT
Northern District of California**

<p>UNITED STATES OF AMERICA v. Danilo Velasquez a/k/a "Triste"</p>	<p>))))))</p>	<p>AMENDED JUDGMENT IN A CRIMINAL CASE USDC Case Number: CR-8-00730-033 WHA BOP Case Number: DCAN38CR00730-033 USM Number: 14341-111 Defendant's Attorney: Steven Lubliner (Appointed)</p>
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**Date of Original Judgment: 2/16/2012
(or Date of Last Amended Judgment)**

THE DEFENDANT:

- pleaded guilty to count(s): _____
- pleaded nolo contendere to count(s): _____ which was accepted by the court.
- was found guilty on counts: One, Two, Three, and Four of the Third Superseding Indictment after a plea of not guilty; however, the conviction as to Count Four was vacated by the Court.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1962(d)	Racketeering Conspiracy	September 24, 2009	One
18 U.S.C. § 1959(a)(5)	Conspiracy to Commit Murder in Aid of Racketeering	September 24, 2009	Two
18 U.S.C. § 1959(a)(6)	Conspiracy to Commit Assault with a Dangerous Weapon in Aid of Racketeering	September 24, 2009	Three

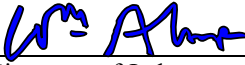
The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- 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.

4/19/2022

Date of Imposition of Judgment



Signature of Judge
The Honorable William Alsup
Senior United States District Judge

Name & Title of Judge

4/22/2022

Date

DEFENDANT: Danilo Velasquez

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CASE NUMBER: CR-8-00730-033 WHA

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Life imprisonment. This term consists of terms of life on Count One, 120 months on Count Two, and 36 months on Count Three, all such terms to be served concurrently.

The appearance bond is hereby exonerated, or upon surrender of the defendant as noted below. Any cash bail plus interest shall be returned to the owner(s) listed on the Affidavit of Owner of Cash Security form on file in the Clerk's Office.

- The Court makes the following recommendations to the Bureau of Prisons:
- 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 _____ am/pm on _____ (no later than 2:00 pm).
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - at _____ am/pm on _____ (no later than 2:00 pm).
 - 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: Danilo Velasquez
CASE NUMBER: CR-8-00730-033 WHA

Judgment - Page 3 of 8

SUPERVISED RELEASE

If released from imprisonment, the defendant shall be on supervised release for a term of: Five years. This term consists of five years on Count One, three years on Count Two, and one year on Count Three, all such terms to run concurrently.

The court imposes a five-year term of supervised release. However, if released from imprisonment, the defendant will likely be deported and will not be in the United States to be supervised. At all times, the defendant shall comply with the rules and regulations of the Bureau of Immigration and Customs Enforcement and, if deported, shall not reenter the United States without the express consent of the Secretary of the Department of Homeland Security.

If the defendant is deported, and within five years of release from imprisonment returns to this country, legally or illegally, the defendant shall be subject to the conditions of supervised release and shall report to the nearest probation office within 72 hours of reentry. If the defendant for some reason is not deported and remains in this country, the defendant shall be subject to the conditions of supervised release and shall report to the nearest probation office within 72 hours of release from imprisonment.

MANDATORY CONDITIONS OF SUPERVISION

- 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: Danilo Velasquez

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CASE NUMBER: CR-8-00730-033 WHA

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, 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 RELEASE, 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 follow the instructions of the probation officer related to the conditions of supervision.
 - 5) You must answer truthfully the questions asked by your probation officer.
 - 6) 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, for example), 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.
 - 7) 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 these and the special conditions of your supervision that he or she observes in plain view.
 - 8) You must work at least part-time (defined as 20 hours per week) at a lawful type of employment unless excused from doing so by the probation officer for schooling, training, community service or other acceptable activities. 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.
 - 9) You must not communicate or interact with someone you know is engaged in criminal activity. You must not associate, communicate, or interact with any person you know has been convicted of a felony, unless granted permission to do so by the probation officer.
 - 10) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
 - 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) 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).
- If the probation officer determines that you pose a risk to a third party, 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. *(check if applicable)*

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. I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision upon a finding of a violation of probation or supervised release.

(Signed) _____
 Defendant

 Date

 U.S. Probation Officer/Designated Witness

 Date

SPECIAL CONDITIONS OF SUPERVISION

1. You must at all times either have full-time employment, full-time training for employment, or full-time job search, or some combination thereof, unless otherwise excused by probation.
2. You must pay any restitution and special assessment that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.
3. You must participate in a mental health treatment program, and you must pay for part or all of the cost of treatment, as directed by the probation officer. You must adhere to a copayment schedule as determined by the probation officer.
4. You must not knowingly participate in gang activity, must not associate with any member of the MS-13 gang, and must not wear the clothing, colors, or insignia of the MS-13 gang.
5. You must not have contact with any codefendant in this case.
6. You must not be found in any area frequented by gangs, as designated by the probation officer, except as the probation officer, or the Court, may allow.
7. Unless directed in writing otherwise, you must check your voice mail and/or answering machine on a daily basis to determine if any instructions were left by the probation officer. You must follow all such instructions, including but not limited to drug testing.
8. You must not own or possess any firearms, ammunition, destructive devices, or other dangerous weapons and must not be present in a vehicle where you know any firearm or ammunition is present.
9. You must cooperate in the collection of DNA as directed by the probation officer.
10. You must submit your person, residence, office, vehicle, or any property under your control, including any computers, cell phones, and other electronic devices, to a search. Such a search must be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation. You must warn any residents that the premises may be subject to searches.

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$300	Waived	\$21,650	N/A	N/A

- 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.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Moises Frias, Sr.	\$21,650	\$21,650	100%
TOTALS	\$21,650	\$21,650	

- 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 is waived for the 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.

AO 245C (Rev. AO 09/19-CAN 12/19) Amended Judgment in Criminal Case

DEFENDANT: Danilo Velasquez
CASE NUMBER: CR-8-00730-033 WHA

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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 _____ due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, or E, and/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:
It is further ordered that the defendant shall pay to the United States a special assessment of \$300. Payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102. During imprisonment, payment of criminal monetary penalties are due at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

It is further ordered that the defendant shall pay restitution to Moises Frias, Sr., in the amount of \$21,650, to be due immediately. During imprisonment, payment of restitution is due at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Notwithstanding any payment schedule set by the court, the United States Attorney’s Office may pursue collection through all available means in accordance with 18 U.S.C. §§ 3613 and 3664(m). The restitution payments shall be made to the Clerk of U.S. District Court, Attention: Financial Unit, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

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

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

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
CR 12-00625-001 WHA	\$21,650	\$21,650	Moises Frias, Sr.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s): _____

* 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.

AO 245C (Rev. AO 09/19-CAN 12/19) Amended Judgment in Criminal Case

DEFENDANT: Danilo Velasquez

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CASE NUMBER: CR-8-00730-033 WHA

- The defendant shall forfeit the defendant's interest in the following property to the United States:

- The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect the defendant's responsibility for the full amount of the restitution ordered.**