

IN THE
Supreme Court of the United States

CESAR YOALDO CASTILLO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

To secure a conviction under the federal VICAR assault statute, the government must prove, as one element of the offense, that the defendant committed an assault “in violation of the laws of any State or the United States.” 18 U.S.C. § 1959(a)(3). The question presented, which divides the circuits, is:

If a VICAR assault is predicated on an underlying state or federal assault offense that does not satisfy 18 U.S.C. § 924(c)’s “crime of violence” definition, can the VICAR assault still qualify as a “crime of violence” under that same definition?

STATEMENT OF RELATED CASES

There are no related cases.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT OF RELATED CASES	ii
TABLE OF CONTENTS.....	iii
TABLE OF APPENDICES	iv
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
DECISIONS BELOW	1
JURISDICTION.....	1
RELEVANT STATUTORY PROVISIONS	1
INTRODUCTION	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT	7
I. The courts of appeals are divided over the question presented	7
II. The question presented is important and recurring, and this case presents an excellent vehicle for resolving it	10
III. The decision below is wrong.....	11
CONCLUSION.....	16

TABLE OF APPENDICES

	Page
Opinion of the United States Court of Appeals for the Fourth Circuit, filed February 27, 2024	A1
Judgment of the United States Court of Appeals for the Fourth Circuit, filed February 27, 2024.....	A8
Order of the United States District Court for the Western District of North Carolina, filed March 24, 2020	A9
Judgment of the United States District Court for the Western District of North Carolina, filed March 24, 2020	A26
Judgment of the United States District Court for the Western District of North Carolina, filed January 7, 2011	A27
Rehearing Order of the United States Court of Appeals for the Fourth Circuit, filed April 26, 2024	A33
Third Superseding Indictment, filed July 27, 2009.....	A34

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Alvarado-Linares v. United States</i> , 44 F.4th 1334 (11th Cir. 2022)	7, 8
<i>Borden v. United States</i> , 141 S. Ct. 1817 (2021)	5, 9, 11, 14, 15
<i>Delligatti v. United States</i> , No. 23-825 (certiorari granted June 3, 2024)	3, 8, 10, 16
<i>Johnson v. United States</i> , 135 S. Ct. 2551 (2015)	4
<i>Kinard v. United States</i> , No. 24-5042 (petition filed July 8, 2024)	10, 16
<i>Manners v. United States</i> , 947 F.3d 377 (6th Cir. 2020)	7, 9
<i>Thomas v. United States</i> , No. 23-1168 (petition filed April 26, 2024)	9-10, 16
<i>United States v. Adoma</i> , 781 F. App'x 199 (4th Cir. 2019)	13
<i>United States v. Castillo</i> , No. 20-6767 (4th Cir. March 14, 2023)	4
<i>United States v. Davis</i> , 139 S.Ct. 2319 (2019)	4
<i>United States v. Delligatti</i> , 83 F.4th 113 (2d Cir. 2023)	8, 11
<i>United States v. Gavida et al.</i> , No. 3:15-cr-121 (W.D.N.C. April 8, 2016)	13
<i>United States v. Keene</i> , 955 F.3d 391 (4th Cir. 2020)	12
<i>United States v. Kinard</i> , 93 F.4th 213 (4th Cir. 2024)	6, 11, 12
<i>United States v. Lassiter</i> , 96 F.4th 629 (4th Cir. 2024)	10
<i>United States v. Laurent</i> , 33 F.4th 63 (2d Cir. 2022)	8

<i>United States v. Morris</i> , 61 F.4th 311 (2d Cir. 2023)	8
<i>United States v. Ortiz-Orellana</i> , 90 F.4th 689 (4th Cir. 2024)	10
<i>United States v. Pastore</i> , 36 F.4th 423 (2d Cir. 2022)	8
<i>United States v. Rosales Lopez et al.</i> , 3:08-cr-134 (W.D.N.C. July 28, 2011)	13
<i>United States v. Simmons</i> , 917 F.3d 312 (4th Cir. 2019)	5
<i>United States v. Thomas</i> , 87 F.4th 267 (4th Cir. 2023)	5, 6, 7, 9, 10, 11, 12, 14
<i>United States v. Tipton</i> , 95 F.4th 831 (4th Cir. 2024)	10
<i>United States v. Toki</i> , 23 F.4th 1277 (10th Cir. 2022)	8, 9
<i>United States v. White</i> , 7 F.4th 90 (2d Cir. 2021)	8
Statutes & Other Authorities:	
18 U.S.C. § 924	4
18 U.S.C. § 924(c)	3, 4, 6, 7, 8, 10, 11, 12, 14, 15
18 U.S.C. § 924(c)(1)(A)	1
18 U.S.C. § 924(c)(3)	2
18 U.S.C. § 1959	2
18 U.S.C. § 1959(a)	6
18 U.S.C. § 1959(a)(3)	2, 3, 4, 8, 13, 14
28 U.S.C. § 1254(1)	1
28 U.S.C. § 2255	4
N.C. Gen. Stat. § 14-32	3, 4

PETITION FOR WRIT OF CERTIORARI

Petitioner Cesar Castillo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

DECISIONS BELOW

The opinion of the court of appeals is unpublished and is reprinted at Pet. App. A1-A7. The court's order denying en banc review is at Pet. App. A33. The district court's sentencing judgment is reprinted at Pet. App. A27-A32, and its order denying Castillo's post-conviction motion to vacate is reprinted at Pet. App. A9-A25.

JURISDICTION

The court of appeals entered judgment on February 27, 2024. Pet. App. A1. It denied a timely petition for rehearing on April 26, 2024. Pet. App. A33. On July 15, 2024, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including September 9, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 924(c)(1)(A):

Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence . . . –

- (i) be sentenced to a term of imprisonment of not less than 5 years;
- (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

- (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

18 U.S.C. § 924(c)(3):

For purposes of this subsection the term “crime of violence” means an offense that is a felony and –

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 1959(a)(3):

Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—

...

- (3) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than twenty years or a fine under this title, or both;

...

INTRODUCTION

The circuits are in conflict about how to determine whether an offense under the VICAR statute, 18 U.S.C. § 1959, qualifies as a “crime of violence” under 18

U.S.C. § 924(c). This Court recently granted certiorari to resolve a different circuit conflict that also arose in determining whether a VICAR offense qualifies as a § 924(c) “crime of violence.” *See Delligatti v. United States*, No. 23-825 (certiorari granted June 3, 2024).

The Court should resolve the conflict presented by this case as well, by granting certiorari in either this case or one of the other cases that present the same issue. Alternatively, the Court should hold this case pending the resolution of *Delligatti*.

STATEMENT OF THE CASE

In December 2009, Castillo pled guilty to six counts arising from a gang-related RICO conspiracy. The six counts included three counts of assault with a dangerous weapon in aid of racketeering activity, in violation of 18 U.S.C. § 1959(a)(3), often referred to as the VICAR statute, and two counts of using a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c). For each of the § 924(c) counts, the indictment alleged that the underlying “crime of violence” was one of the violations of the VICAR statute alleged in the indictment. *See* Pet. App. A94 (Count 36 alleging VICAR offense in Count 35 as the underlying “crime of violence”); Pet. App. A98 (Count 40 alleging VICAR offense in Count 39 as the underlying “crime of violence”). The VICAR counts, in turn, alleged that the underlying offense was an assault “in violation of North Carolina law, N.C. Gen. Stat. § 14-32.” Pet. App. A93 (Count 35), Pet. App. A97 (Count 39). At sentencing, the district court imposed an aggregate sentence of 392 months, which consisted of

390 months on the § 924(c) counts plus two additional months on the remaining counts.

In 2016, Castillo filed a motion for post-conviction relief under 28 U.S.C. § 2255, arguing that his § 924(c) convictions were unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). While his claim was pending, this Court applied *Johnson* to hold that § 924(c)'s residual clause is unconstitutionally vague. *See United States v. Davis*, 139 S.Ct. 2319 (2019).

In 2020, the district court denied Castillo's motion, concluding that his VICAR assault conviction qualified as a "crime of violence" under § 924(c)'s force clause. On appeal, the Fourth Circuit granted a certificate of appealability. As relevant here, the certificate described the issue as "whether the offense of violent crime in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(3), specifically by committing assault with a dangerous weapon under N.C. Gen. Stat. § 14-32, qualifies as a crime of violence for purposes of 18 U.S.C. § 924." *See* Order (Dkt. No. 17), *United States v. Castillo*, No. 20-6767 (4th Cir. March 14, 2023).¹

Castillo argued that his VICAR offense under § 1959(a)(3) did not qualify as a "crime of violence" under § 924(c)'s force clause. In support, he contended that, because his VICAR conviction was based on a North Carolina assault offense, the

¹ The certificate also included a separate question regarding whether Castillo's post-conviction "claim is precluded by the waiver provision in the plea agreement or procedurally defaulted by Castillo's failure to raise it on direct appeal." Pet. App. A6. The parties' briefing largely agreed that the waiver and default issues were intertwined with the merits under binding precedent, and the court's opinion ultimately did not address either waiver or default. Pet. App. A6.

court must focus its categorical-approach inquiry on the elements of that state offense. And he pointed to binding Fourth Circuit precedent, which established that the North Carolina assault offense lacked the requisite mens rea under this Court's decision in *Borden v. United States*, 141 S. Ct. 1817 (2021). See *United States v. Simmons*, 917 F.3d 312 (4th Cir. 2019) (holding that "assault" under North Carolina law requires only "culpable negligence," a standard less than recklessness).

In February 2024, a panel of the Fourth Circuit affirmed the district court's denial in an unpublished decision. The panel did not dispute that the underlying North Carolina assault offense lacks the mens rea required by *Borden*. Instead, the panel held that it was bound by its decision in a "companion case presenting the very same issue," in which the court "held that VICAR assault with a dangerous weapon was itself a valid crime of violence and that there was no need to look through the VICAR offense to its underlying predicates to make that determination." Pet. App. A6 (citing *United States v. Thomas*, 87 F.4th 267 (4th Cir. 2023)).

In *Thomas*, the Court acknowledged that the circuits were in conflict on the methodological "look through" issue. *Thomas*, 87 F.4th at 275 n.*. In choosing sides on that issue, the court reasoned that a VICAR conviction requires the government to prove, as an element, both "the enumerated federal offense" (as relevant here, assault with a dangerous weapon) and "that the defendant's conduct violated an independent state or federal law." *Thomas*, 87 F.4th at 274. In addition, the court held that a VICAR offense "satisfies *Borden*'s mens rea requirement" because of the

VICAR’s statute’s purpose element, which requires that the offense “be committed ‘as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from’ a racketeering enterprise or ‘for the purpose of gaining entrance to or maintaining or increasing position’ in the racketeering enterprise.” *Id.* at 273-74 (quoting 18 U.S.C. § 1959(a)).

Castillo sought en banc review of the panel’s decision. He relied in part on an intervening decision in which Senior Judge Keenan wrote a concurrence arguing that *Thomas* contains two flawed holdings. *See United States v. Kinard*, 93 F.4th 213, 217 (4th Cir. 2024) (Keenan, S.J., joined by Heytens, J.). First, Judge Keenan explained that, in *Thomas*, the Fourth Circuit “became the first of our sister circuits to rely on the final element of a substantive VICAR assault offense, namely, the purpose element, to establish the mens rea necessary for a predicate VICAR assault offense to qualify as a ‘crime of violence’ under § 924(c).” *Id.* at 217. Second, the *Thomas* court held “that for every charge of VICAR assault with a dangerous weapon the government must prove as an element the enumerated federal offense of ‘assault with a dangerous weapon.’” *Id.* Her opinion explained at length her “concerns with both of these points.” *Id.*

Despite this intra-circuit disagreement and the presence of an inter-circuit conflict, the Fourth Circuit denied rehearing en banc. Pet. App. A33. This petition now follows.

REASONS FOR GRANTING THE WRIT

I. The courts of appeals are divided over the question presented.

The circuits are divided three to two on the legal issue presented by this case. When the Fourth Circuit weighed in on the issue, it specifically acknowledged that the circuits were already split. *Thomas*, 87 F.4th at 275 n.* (noting conflict between the “different approaches” taken by *Alvarado-Linares v. United States*, 44 F.4th 1334 (11th Cir. 2022) and *Manners v. United States*, 947 F.3d 377 (6th Cir. 2020)).

Had Castillo been prosecuted in the Second, Tenth, or Eleventh Circuits, his § 924(c) convictions would be unconstitutional. In those circuits, a VICAR offense qualifies as a “crime of violence” only if the predicate state or federal offense satisfies the “crime of violence” definition. For example, in *Alvarado-Linares v. United States*, 44 F.4th 1334, 1342-1343 (11th Cir. 2022), the parties presented similar arguments to those addressed by the decision below. The defendant argued that courts applying the categorical approach “must look through the VICAR statute to the elements of the underlying state crime, which is Georgia malice murder.” *Id.* at 1342. The government, by contrast, argued that the court “should look only to the generic federal definition of ‘murder’ as that term is used in the [VICAR] statute.” *Id.*

The Eleventh Circuit held that the defendant “has the better argument.” *Id.* at 1342-43. It explained that “[t]he modified categorical approach requires us to ask whether a crime, as charged and instructed, has ‘as an element the use, attempted use, or threatened use of physical force.’” *Id.* at 1343 (quoting 18 U.S.C. § 924(c)).

Given “the facts of this case,” where the VICAR indictment expressly incorporated a Georgia offense, the Court held that it “cannot answer [the categorical-approach] question without looking at Georgia law.” *Id.* In doing so, the Court observed that its conclusion was “consistent with the approach adopted by several of our sister circuits when confronted with similar circumstances.” *Id.* (collecting cases).

The Second Circuit has reached the same conclusion. It recently explained that a “substantive VICAR offense”—like the § 1959(a)(3) offense here—“hinges on the underlying predicate offense.” *United States v. Pastore*, 36 F.4th 423, 429 (2nd Cir. 2022) (cleaned up). As a result, the Court held that any court applying the categorical approach must “look to that predicate offense to” find the elements for the categorical analysis. *Id.* This approach has been consistently followed, including in *United States v. Delligatti*, 83 F.4th 113, 119-20 (2d Cir. 2023), a case in which this Court has already granted certiorari on a related issue. *See Delligatti v. United States*, No. 23-825 (certiorari granted June 3, 2024); *see also United States v. Morris*, 61 F.4th 311, 318-21 (2d Cir. 2023); *United States v. Laurent*, 33 F.4th 63, 92 (2d Cir. 2022); *United States v. White*, 7 F.4th 90, 104 (2d Cir. 2021).

The Tenth Circuit takes this same position, and its decision is particularly relevant to this case. In *United States v. Toki*, 23 F.4th 1277, 1280 (10th Cir. 2022), the Tenth Circuit analyzed whether two § 1959(a)(3) convictions—premised on the “Utah and Arizona statutes criminalizing assault with a dangerous weapon”—qualified as crimes of violence. *Id.* at 1280. Because those state offenses required a mens rea of recklessness, the Court held that they did not satisfy the force clause

under *Borden*. *Id.* at 1280-82.

The *Toki* decision nicely illustrates the two separate but related conflicts at issue in this case. First, under the Fourth Circuit’s *Thomas* decision, the categorical-approach analysis would have focused not on the elements of the incorporated state crime but instead on the generic definition of “assault with a dangerous weapon.” Second, under *Thomas*, the mens rea inquiry would have been resolved solely by reference to the VICAR statute’s purpose element.

Put simply, if Castillo had been prosecuted in the Tenth Circuit like the *Toki* defendant was, his § 924(c) convictions—and the 390-month consecutive sentences they carry—would have been invalidated.

When the Fourth Circuit decided to forge a different path, it suggested that its opinion was in accord with the Sixth Circuit’s decision in *Manners v. United States*, 947 F.3d 377, 378-79 (6th Cir. 2020). *See Thomas*, 87 F.4th at 275 n.*. In *Manners*, the Sixth Circuit held that a VICAR assault qualified as a “crime of violence.” Like the Fourth Circuit in *Thomas*, the *Manners* decision did not base that holding on the elements of the incorporated predicate offense; it reasoned instead that “the ‘dangerous weapon’ part” of the VICAR assault statute “necessarily renders [the] offense a crime of violence.” 947 F.3d at 380-81.

* * *

In sum, the circuits are in direct conflict on the legal issues presented by this case, which are also pending before this Court in *Thomas v. United States*, No. 23-

1168 (petition filed April 26, 2024), and *Kinard v. United States*, No. 24-5042 (petition filed July 8, 2024). This Court’s review is warranted.

II. The question presented is important and recurring, and this case presents an excellent vehicle for resolving it.

The issue presented by this case is both recurring and critically important, as the federal government frequently prosecutes individuals for VICAR offenses and for violations of 18 U.S.C. § 924(c). The correct framework for determining whether a particular VICAR offense qualifies as a “crime of violence” under § 924(c) matters a lot in these prosecutions, as the outcome of that analysis can mean a difference of multiple decades in prison for those affected. In this case, for example, Castillo received a 90-month consecutive sentence for one § 924(c) conviction, plus a 300-month consecutive sentence for a second § 924(c) conviction.

These issues recur with great frequency. In just the Fourth Circuit alone, the governing *Thomas* decision has been cited for the key principles here in five cases in the ten months since it was decided.²

Indeed, this Court recently granted certiorari to resolve a circuit conflict arising from a case, like this one, where a VICAR offense served as the underlying “crime of violence” to support a conviction and consecutive sentence under § 924(c). *See Delligatti v. United States*, No. 23-825 (certiorari granted June 3, 2024). In *Delligatti*, the Second Circuit held that a VICAR conviction satisfied § 924(c)’s force

² In addition to this case and *Kinard*, the others are *United States v. Tipton*, 95 F.4th 831 (4th Cir. 2024); *United States v. Lassiter*, 96 F.4th 629 (4th Cir. 2024); *United States v. Ortiz-Orellana*, 90 F.4th 689 (4th Cir. 2024).

clause by analyzing the elements of the incorporated New York state offense (83 F.4th at 119-20)—precisely the analysis that the Fourth Circuit refused to conduct in this case. Accordingly, given the inter-relation of the issues, the Court may wish to consider the issue presented here during the same term as *Delligatti*.

Finally, this case presents no vehicle problems that would present the court from reaching the question presented. To begin, the court of appeals affirmed Castillo’s § 924(c) conviction based solely on its legal conclusions that (1) the elements of the incorporated state-law assault were not relevant; and (2) the VICAR statute’s purpose element satisfies *Borden*’s mens rea requirements. The court of appeals focused on these issues because its own binding precedent dictates that the incorporated North Carolina assault offense does not satisfy the force clause under the categorical approach. In other words, the answer to the question presented will be dispositive; if the Court agrees with Castillo’s arguments, a remand will be necessary.

III. The decision below is wrong.

This Court should also grant review because the decision below is wrongly decided on two fronts, for the reasons set forth by Judge Keenan. *See United States v. Kinard*, 93 F.4th 213, 217 (4th Cir. 2024) (Keenan, S.J., joined by Heytens, J., concurring).

First, *Thomas*’s holding that the state-offense elements are irrelevant to the categorical approach is premised on a misreading of the VICAR statute. According to *Thomas*, securing a VICAR conviction requires the government to prove, as an

element, both “the enumerated federal offense” (as relevant here, assault with a dangerous weapon) and “that the defendant’s conduct violated an independent state or federal law.” *Thomas*, 87 F.4th at 274. The *Thomas* court based this holding not on the statutory text, but instead on its interpretation of language in *United States v. Keene*, 955 F.3d 391 (4th Cir. 2020)—an opinion authored by Judge Keenan.

The *Thomas* panel’s reading of *Keene* is unjustified, as Judge Keenan explained in *Kinard*: “In my view, our decision in *Keene* does not bear on whether there is a separate generic offense element.” 93 F.4th at 221. Based on the question presented in *Keene*, Judge Keenan explained, “[w]e did not consider whether the enumerated federal offense of assault created a separate element of a substantive VICAR conviction, nor did we consider whether the VICAR statute requires a look through approach for a § 924(c) crime of violence analysis.” *Id.*

Setting aside its misreading of *Keene*, the more important flaw in *Thomas* is that the decision “undermine[s] the plain text of the VICAR statute.” *Id.* at 220 (Keenan, J. concurring). The key statutory phrase does not “add an element of proof to the VICAR crime charged in the indictment;” instead, it “simply identifies the relevant generic federal offense.” *Id.* Based on this understanding, Judge Keenan highlighted that the Fourth Circuit’s pre-*Thomas* “cases addressing VICAR offenses . . . generally have not identified the enumerated federal offense as a separate element.” *Id.* (collecting cases).

This feature of VICAR’s statutory structure means that a jury must find—or a defendant must admit—the elements of the charged state offense, not the

elements of a generic or hypothetical federal offense of the same name. The law as applied in Castillo's case makes this clear. Although Castillo pled guilty, several of his co-defendants did not. At trial, the jury was instructed to determine its verdict on the VICAR counts by applying "the elements" of the predicate state offense cited in the indictment. *See* Transcript of Jury Charge and Verdict (Dkt. No. 1468), *United States v. Rosales Lopez et al.*, 3:08-cr-134 (W.D. N.C. July 28, 2011), at 73 (instructions on count 51). In fact, one of the co-defendants was convicted at trial of being an accessory after the fact to Castillo's VICAR offense, and the instructions on that count specifically refer to the North Carolina assault offense charged in the indictment. *Id.* at 62 (instructions on count 41).

Instructions of this nature are routine in the Western District of North Carolina. *See, e.g.*, Transcript of Jury Trial Proceedings (Dkt. No. 899), *United States v. Adoma et al.*, No. 3:14-cr-229 (W.D. N.C. Oct. 11, 2017), at 2935-37 (for VICAR assault under § 1959(a)(3), instructing jury on the incorporated North Carolina assault offense while also specifically instructing that "assault" may be proven by an "act with such reckless disregard for the safety of others to show a willingness to cause injury to another"), affirmed by *United States v. Adoma*, 781 F. App'x 199 (4th Cir. 2019); Transcript of Jury Trial Proceedings (Dkt. No. 948), *United States v. Gavida et al.*, No. 3:15-cr-121 (W.D. N.C. April 8, 2016), at 1249 (instructing the jury to apply "the elements" of "the North Carolina murder statute" in rendering a verdict on a VICAR offense under § 1959(a)(1) and (a)(2)). And the same appears to be true in other districts as well. *See* Petition for Rehearing En

Banc, *United States v. Kinard*, No. 22-6285, at 18 (collecting cases).

The *Thomas* decision would mark a sea change from this well-established practice. To comply with *Thomas*, the district courts will be required to instruct juries on both the elements of the generic enumerated offense and the specific state or federal offense incorporated into the VICAR count, and a conviction will only be possible if the jury finds that both sets of elements are established. This approach does not have support in either text or precedent, and if adopted it would call into question the legality of countless VICAR convictions secured before the sea change.

The second holding in *Thomas*—that the VICAR statute’s purpose element satisfies § 924(c)’s force clause—is equally flawed. The purpose element requires proof that the defendant acted “for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity.” 18 U.S.C. § 1959(a)(3). But this purpose requirement is not linked to what § 924(c)’s force clause requires. In *Borden*, the Supreme Court held that the “against the person or property of another” language requires intentionality not simply in the decision to use force, but also in the decision to direct it towards another. 93 F.4th at 218 (Keenan, J. concurring) (citing *Borden*).

This directed-force component is not present in the VICAR’s “purpose” element, as Judge Keenan recognized: “the mens rea required under the force clause thus differs from the mens rea required under the purpose element in that the latter does not require a showing that the defendant knowingly directed force *at a target*.” *Id.* at 219 (emphasis in original).

Put simply, a defendant can act for the purpose required by VICAR but without intending to deploy physical force *against* another person. Judge Keenan illustrated the point with an example:

[C]onsider a defendant riding in a car late at night who sees a rival gang member's empty car parked on a deserted street in the defendant's gang's territory. The defendant fires a "warning shot" out his car's window. As he passes the empty car, the defendant sees that the bullet has hit and injured a rival gang member, whom the defendant had not seen standing nearby. When the defendant returns to his gang's headquarters, he brags to his superiors that he shot the rival gang member.

In that scenario, the defendant purposefully fired the gun, but he did not purposefully hit the individual he had not seen. Instead, in firing the gun and injuring a person, the defendant "pa[id] insufficient attention to the potential application of force" and "consciously disregard[ed] a substantial and unjustifiable risk." *Borden*, 593 U.S. at 427, 432. In other words, the defendant in this example *recklessly* applied force to an individual, rather than *directing* force at a target.

Nevertheless, under our precedent, the defendant likely committed the assault "for the purpose of gaining entrance to or maintaining or increasing position in [the] enterprise," as required to satisfy the purpose element of a substantive VICAR offense. In my view, as illustrated by the above scenario, proof of a "gang-related motive" under the purpose element does not, of itself, establish that the defendant consciously directed any force "against" a target, as required to qualify that offense as a § 924(c) "crime of violence." *Borden*, 593 U.S. at 430–31.

Id. (some internal citations omitted; emphasis in original).

* * *

The legal errors in the Fourth Circuit's opinion are highly consequential in this case and many others. This Court's intervention is needed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Alternatively, the Court may wish to hold this petition for disposition of the pending petitions in *Thomas* and *Kinard* and the upcoming merits decision in *Delligatti*.

Dated: September 9, 2024

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

Page

Opinion of the United States Court of Appeals for the Fourth Circuit, filed February 27, 2024.....	A1
Judgment of the United States Court of Appeals for the Fourth Circuit, filed February 27, 2024.....	A8
Order of the United States District Court for the Western District of North Carolina, filed March 24, 2020	A9
Judgment of the United States District Court for the Western District of North Carolina, filed March 24, 2020	A26
Judgment of the United States District Court for the Western District of North Carolina, filed January 7, 2011	A27
Rehearing Order of the United States Court of Appeals for the Fourth Circuit, filed April 26, 2024	A33
Third Superseding Indictment, filed July 27, 2009.....	A34

UNPUBLISHED

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

No. 20-6767

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CESAR YOALDO CASTILLO

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina at Charlotte. Robert J. Conrad, Jr., District Judge. (3:08-cr-00134-RJC-15; 3:16-cv-00431-RJC)

Argued: October 24, 2023

Decided: February 27, 2024

Before WILKINSON, AGEE, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: Joshua B. Carpenter, FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC., Asheville, North Carolina, for Appellant. Anthony J. Enright, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee. **ON BRIEF:** John G. Baker, Federal Public Defender, FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC., Charlotte, North Carolina, for Appellant. Dena J. King, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cesar Yoaldo Castillo pleaded guilty in 2009 to two counts of using a firearm in relation to a “crime of violence” in violation of 18 U.S.C. § 924(c). The underlying crime of violence for each count was VICAR assault with a dangerous weapon. Castillo seeks to vacate his conviction on the basis that VICAR assault with a dangerous weapon is no longer a valid crime-of-violence predicate. In the companion case presenting this very issue, we held that it is. *See United States v. Thomas*, 87 F.4th 267 (4th Cir. 2023). We therefore uphold Castillo’s conviction.

I.

Castillo was a member of La Mara Salvatrucha, known as MS-13, an international criminal gang with Salvadoran roots operating across the United States and Central America. He was unlawfully residing in North Carolina when he participated in various racketeering activities around the State, including two shootings.

The first shooting occurred in the early morning hours of Superbowl Sunday 2008. Castillo and his fellow gang members were turned away from a Charlotte night club when they tried to enter with an open bottle of beer. The gang members were reported to have stated, “We are Mara Salvatrucha, and we will kill all of you,” before opening fire on the crowd. The club owner and a patron were shot in the ruckus.

Outside another night club several weeks later, Castillo and his crew encountered a car full of rival gang members. Gang signs were flashed, then weapons. The MS-13 members jumped into their own vehicle and chased the car while bullets flew. Castillo sat

in the back seat, window cracked, emptying his weapon into the other vehicle. One of his bullets struck a rival gang member.

II.

These skirmishes and others culminated in Castillo's being charged alongside twenty-five other individuals in a seventy-count federal indictment. Castillo pleaded guilty to six criminal counts, including four counts related to the 2008 shootings: two counts of possessing a firearm in furtherance of a crime of violence under 18 U.S.C. § 924(c) (Counts 36 and 40) and two counts of aiding and abetting assault with a dangerous weapon in aid of racketeering activity (VICAR) in violation of 18 U.S.C. § 1959(a)(3) and § 2 (Counts 35 and 39).

For each of the § 924(c) counts, the indictment charged that the underlying "crime of violence" was one of the VICAR offenses to which he pleaded. Count 36 charged the VICAR offense in Count 35 as its underlying "crime of violence," and Count 40 charged the VICAR offense in Count 39. As "crimes in aid of racketeering," 18 U.S.C. § 1959, VICAR offenses themselves must be based on an underlying state or federal predicate crime. Castillo's VICAR counts, in turn, alleged that the underlying offenses were both assault in violation of North Carolina law. *See* N.C. Gen. Stat. § 14-32.

The plea agreement also stipulated that Castillo waived his right to collaterally attack his conviction on any ground other than prosecutorial misconduct or ineffective assistance of counsel.

The court sentenced Castillo to a total term of imprisonment of 392 months, a downward variance from the term advised by the United States Sentencing Guidelines. The

sentence included a total term of 390 months for Castillo’s § 924(c) convictions and 2-month concurrent sentences for each of the other counts. Though he did not directly appeal his conviction or his sentence, Castillo filed an 18 U.S.C. § 2255 motion to vacate his § 924(c) conviction in light of changes in the law.

III.

In 2009, when Castillo pleaded guilty to violating § 924(c), the term “crime of violence” was defined as a felony that:

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) . . . by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3). Subsection (A) was commonly referred to as the “force” or “elements clause” and subsection (B) as the “residual clause,” and felonies could qualify under either subsection. But the Supreme Court has since narrowed the class of offenses that could serve as predicate crimes of violence for a § 924(c) conviction, first by invalidating the residual clause, *United States v. Davis*, 139 S. Ct. 2319, 2336 (2019), and then by establishing a heightened mens rea for the remaining force clause, *Borden v. United States*, 141 S. Ct. 1817, 1821–22 (2021) (plurality opinion) (stating that an offense must have a mens rea greater than recklessness to qualify as a “violent felony”); *id.* at 1835 (Thomas, J., concurring) (recognizing the same).

Castillo argued that his § 924(c) convictions must be vacated because the predicate crimes underlying them—both VICAR assault with a dangerous weapon—no longer qualified as crimes of violence.

IV.

The district court rejected Castillo’s argument. It held that Castillo waived his challenge by his “knowing and voluntary guilty plea and post-conviction waiver,” that his challenge was procedurally defaulted for failing to raise it on direct appeal, and that, in any event, his challenge failed on the merits. *Castillo v. United States*, 2020 WL 1490727, at *4–5 (W.D.N.C. Mar. 24, 2020). For these reasons, it denied his § 2255 motion.

Castillo appealed the denial, and we granted a certificate of appealability to determine whether VICAR assault with a dangerous weapon predicated on North Carolina assault continues to qualify as a crime of violence and whether such a claim is precluded by the waiver provision in the plea agreement or procedurally defaulted by Castillo’s failure to raise it on direct appeal. The disposition of the first issue obviates the need to address the others.

This case came before us alongside a companion case presenting the very same issue, *Thomas*, 87 F.4th 267. In *Thomas*, we held that VICAR assault with a dangerous weapon was itself a valid crime of violence and that there was no need to look through the VICAR offense to its underlying predicates to make that determination. We thus upheld the challenged § 924(c) conviction in that case.

Castillo correctly acknowledged at oral argument that this case would rise or fall with *Thomas*. For the reasons set forth in *Thomas*, we affirm the judgment in this case as well.

AFFIRMED

FILED: February 27, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6767
(3:08-cr-00134-RJC-15)
(3:16-cv-00431-RJC)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CESAR YOALDO CASTILLO

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

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

/s/ NWAMAKA ANOWI, CLERK

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-431-RJC
(3:08-cr-134-RJC-15)**

CESAR YOALDO CASTILLO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

THIS MATTER is before the Court on Petitioner’s Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, (Doc. No. 1), in which he raises a claim pursuant to Johnson v. United States, 135 S.Ct. 2551 (2015). The Government has filed a Motion to Dismiss, (Doc. No. 12).

I. BACKGROUND

Petitioner was one of 26 individuals charged in a 70-count Third Superseding Indictment relating to an MS-13 gang RICO conspiracy. See (3:08-cr-134, Doc. No. 623). The charges pertaining to Petitioner are: Count (1), conspiracy to commit racketeering; Count (26), accessory after the fact to murder (18 U.S.C. §§ 3, 2); Count (35) assault with a dangerous weapon in aid of racketeering activity and aiding abetting the same by “unlawfully and knowingly assault[ing] Victim No. 2 with a dangerous weapon, that being a firearm...” on or about February 3, 2008 “in violation of North Carolina law, Gen. Stat. § 14-32” (18 U.S.C. § 1959(a)(3) and 2); Count (36), use and carrying of a firearm during and in relation to a crime of violence (Count 35) on February 3, 2008 (18 U.S.C. § 924(c)); Count (37), assault with a dangerous weapon in aid of racketeering activity and aiding abetting the same by “unlawfully and knowingly assault[ing] Victim No. 3 with

a dangerous weapon, that being a firearm...” on February 3, 2008 “in violation of North Carolina law, N.C. Gen. Stat. § 14-32” (18 U.S.C. §§ 1959(a)(3), 2); Count (38), use and carrying of a firearm during and in relation to a crime of violence (Count 37) on February 3, 2008 (18 U.S.C. § 924(c)); Count (39), assault with a dangerous weapon in aid of racketeering activity and aiding and abetting the same by “knowingly and unlawfully assault[ing] Victims No. 4, 5, and 6 with a dangerous weapon, that being a firearm,” on February 16, 2008 “in violation of North Carolina law, N.C. Gen. Stat. § 14-32” (18 U.S.C. § 1959(a)(3) and 2); Count (40), using and carrying a firearm during and in relation to a crime of violence (Count 39) on February 16, 2008 (18 U.S.C. § 924(c)); Count (46), Hobbs Act robbery conspiracy (18 U.S.C. § 1951); and Count (47), attempted Hobbs Act robbery (18 U.S.C. § 1951 and 2). (3:08-cr-134, Doc. No. 623).

Petitioner pled guilty to Counts (1), (26),¹ (35), (36), (37), (39), and (40) and “admit[ted] to being in fact guilty as charged in those counts.”² (Id., Doc. No. 759 at 1). As part of his guilty plea, Petitioner waived his direct appeal and post-conviction rights except for claims of prosecutorial misconduct and ineffective assistance of counsel. See (Id., Doc. No. 759 at 6). Petitioner agreed that, “should he file a motion to withdraw his guilty plea after it has been accepted ..., such action will be considered a material breach of the terms of this plea agreement and, should the defendant be unsuccessful in his motion to withdraw his plea, the United States will be relieved of all its obligations under this plea agreement but defendant will not be allowed to withdraw from this plea agreement and will still be bound by its terms.” (Id., Doc. No. 759 at 6). “[A]ny breach of the Plea Agreement ... will allow the United States, at its sole discretion, to withdraw from its obligations under the Plea Agreement. in such event, the United States will be free to proceed on

¹ Count (26) was later dismissed on the Government’s motion. (Id., Doc. Nos. 1243, 1276).

² The Rule 11 colloquy refers to a written Factual Basis that was signed by the parties and would be filed at a later date but no such document appears in the record. See (Id., Doc. No. 1551 at 13-14, 19, 21).

any properly-filed pending, superseding, or additional charges, including any charges dismissed pursuant to the Plea Agreement.” (Id., Doc. No. 759 at 9).

The Presentence Investigation Report (“PSR”) scored the combined adjusted offense level as 24 after applying the multiple-count adjustment. (Id., Doc. No. 1295 at ¶ 24). Three levels were deducted for acceptance of responsibility, resulting in a total offense level of 21. (Id., Doc. No. 1295 at ¶¶ 98-99). No Chapter Four enhancement was applied. (Id., Doc. No. 1295 at ¶ 97). The PSR’s criminal history section indicates that Petitioner was charged with “Assault with Deadly Weapon Intent to Kill, Inflict Serious Injury” for the February 16, 2008 vehicle chase and shooting in North Carolina Superior Court case number 08CRS215706, which was dismissed on August 7, 2008 because “[t]hese charges are part of the instant federal criminal case.” (Id., Doc. No. 1295 at ¶ 116). Petitioner had a total of six criminal history points and a criminal history category of III. (Id., Doc. No. 1295 at ¶¶ 109-110). The resulting advisory guideline range was 46 to 57 months’ imprisonment plus mandatory consecutive sentences of not less than 10 years for Count (36) and not less than 25 years for Count (40). (Id., Doc. No. 1295 at ¶¶ 133-34).

At the sentencing hearing, the parties stipulated to the existence of a factual basis to support the plea. (Id., Doc. No. 1560 at 3). Defense counsel agreed that the Court can rely on the offense conduct set forth in the PSR. (Id., Doc. No. 1560 at 3). The PSR describes the conduct underlying the VICAR and § 924(c) offenses as follows:

On **February 3, 2008**, at approximately 1:21 am, Castillo ... and other MS-13 members, brandished firearms and started firing into a crowd following an argument with security at the Gold Palacios Club (or Five Star) located at 6736 North Tryon Street, Charlotte. The argument ensued when a security guard for the club told the group they could not enter with an open beer bottle. At first security thought there was an English/Spanish language issue. So the owner of the club ... came outside and also spoke with the group in Spanish. It became obvious at that point that the group understood the instructions of the security guard, but had chosen to ignore them. They said, **“We are Mara Salvatrucha, and we will kill all of you.”** Witnesses indicate the MS-13 group began firing shots. **Castillo later**

admitted he had a handgun with him and that he fired several times as he was leaving the club. The owner of the club ... and a patron ... were both shot. [The owner] was shot in the left calf; [the patron] was shot in the right foot. [The patron] ... was standing near the entrance to the club when the shots began. Both victims required hospitalization and were treated for non-life threatening injuries.... (Counts 35, 36, 37, and 38).

[O]n **February 16, 2008**, at the Mi Cabana Club in Charlotte, NC, Castillo ... and other MS-13 members were present when rival gang members from the Malditos and Surenos pulled into the parking lot. Gang signs were flashed and a juvenile unindicted MS-13 member opened fire on the car containing the rival gang members, a bronze Chevrolet Lumina. The MS-13 members jumped into a nearby automobile, a burgundy sports utility vehicle, and began chasing the Chevrolet.... Castillo was in the back seat.... **Castillo later told investigators he fired shots from a crack in the car window, eventually emptying his weapon. Castillo's shots wounded one of the rival gang members....** Police reports indicate [the rival gang member] was shot in the lower left leg and was treated at the hospital. Two other occupants of the Chevrolet ... were not injured.... (Counts 39 & 40).

(Id., Doc. No. 1295 at ¶¶ 51-52) (emphasis added).

Petitioner stated in open court that he had a chance to read the PSR, understood it, and had enough time to go over it with counsel. (Id., Doc. No. 1560 at 4). Petitioner told the Court he is “sorry ... for everything [he has] done.” (Id., Doc. No. 1560 at 25).

The Court found the existence of a factual basis to support entry of the plea and adopted the PSR without change. (Id., Doc. No. 1560 at 3). The Court sentenced Petitioner below the advisory guideline range to a total of 392 months’ imprisonment comprised of two months for Counts (1), (35), (37), and (39), concurrent, 90 months, consecutive, for Count (36), and 300 months, consecutive, for Count (40). (Id., Doc. No. 1334); see (Id., Doc. No. 1335) (Statement of Reasons). Petitioner did not appeal.

Petitioner filed the instant § 2255 Motion to Vacate through counsel on June 21, 2016, asking that his § 924(c) convictions be vacated under Johnson. He argues that the predicate VICAR offense is not a “crime of violence” because § 924(c)’s residual clause is unconstitutionally vague and the force clause requires the use of violent force, which assault does not satisfy. He further

argues that the Court was without jurisdiction to convict or sentence him for Counts (36) and (40) because the Indictment fails to state an offense against the laws of the United States as required by 18 U.S.C. § 3231.

This case was stayed for several years during the pendency of Fourth Circuit cases United States v. Ali, No. 15-4433 and United States v. Simms, No. 15-4640 and United States Supreme Court case United States v. Davis, No. 18-431. See (Doc. Nos. 5, 8).

On October 4, 2019, the Government filed a Motion to Dismiss arguing that the § 2255 Motion to Vacate is waived, procedurally barred, and meritless. (Doc. No. 12). The Government argues that assault with a dangerous weapon in aid of racketeering under 18 U.S.C. § 1959(a)(3) is a valid § 924(c) predicate because the generic offense of assault with a dangerous weapon is a crime of violence. Even if the generic offense did not qualify, the § 1959 offenses still satisfy § 924(c)'s force clause because the underlying state statute, § 14-32(a) and (c), requires assault with a weapon “with intent to kill.”

Petitioner filed a Response, (Doc. No. 15), arguing that his § 924(c) claim is meritorious based on United States v. Mathis, 932 F.3d 242 (4th Cir. 2019) and United States v. Simmons, 917 F.3d 312 (4th Cir. 2019), and that his claims are not waived or procedurally defaulted. Petitioner asserts that North Carolina General Statutes § 14-32, is not a § 924(c) predicate because the least culpable of the statute's three alternatives, § 14-32(b), is satisfied by culpable negligence and does not include an “intent to kill” element. Petitioner argues that his meritorious claim of actual innocence and his showing of cause and prejudice defeat the post-conviction waiver and procedural default and, alternatively, that the § 924(c) error is a jurisdictional defect that cannot be barred or waived.

The Government's Reply, (Doc. No. 17), reiterates the arguments that the § 924(c) challenge is waived, barred, and meritless and further argues that the Court has subject-matter jurisdiction over Petitioner's criminal case pursuant to 18 U.S.C. § 3231. Regardless of the Court's conclusion about the validity of Petitioner's argument that he is entitled to relief from his conviction because part of § 924(c) is unconstitutional, does not mean that the Court proceeded without jurisdiction.

II. SECTION 2255 STANDARD OF REVIEW

A federal prisoner claiming that his "sentence was imposed in violation of the Constitution or the laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255(a). Rule 4(b) of the Rules Governing Section 2255 Proceedings provides that courts are to promptly examine motions to vacate, along with "any attached exhibits and the record of prior proceedings . . ." in order to determine whether the petitioner is entitled to any relief on the claims set forth therein. After examining the record in this matter, the Court finds that the arguments presented by Petitioner can be resolved without an evidentiary hearing based on the record and governing case law. See Raines v. United States, 423 F.2d 526, 529 (4th Cir. 1970).

III. DISCUSSION

(1) Waiver

An appellate waiver is generally enforceable where the waiver was knowingly and voluntarily made. United States v. Marin, 961 F.2d 493, 496 (4th Cir. 1992). The Fourth Circuit does not distinguish between the enforceability of a waiver of direct-appeal rights from a waiver

of collateral-attack rights in a plea agreement. See United States v. Lemaster, 403 F.3d 216, 200 (4th Cir. 2005). There are narrow exceptions to the enforceability of plea waivers such that “even a knowing and voluntary waiver of the right to appeal cannot bar the defendant from obtaining appellate review of certain claims.” United States v. Johnson, 410 F.3d 137, 151 (4th Cir. 2005). For instance, because “a defendant who waives his right to appeal does not subject himself to being sentenced entirely at the whim of the district court[,] ... a defendant could not be said to have waived his right to appellate review of a sentence imposed in excess of the maximum penalty provided by statute or based on a constitutionally impermissible factor such as race.” Marin, 961 F.2d at 496 (emphasis added).

Petitioner’s knowing and voluntary guilty plea included an enforceable waiver of his post-conviction rights except for claims of ineffective assistance of counsel and prosecutorial misconduct and waived all non-jurisdictional defects. See Blackledge v. Allison, 431 U.S. 63, 74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”); see, e.g., Lemaster, 403 F.3d at 221 (“[A]llegations in a § 2255 motion that directly contradict the petitioner’s sworn statements made during a properly conducted Rule 11 colloquy are always ‘palpably incredible’ and ‘patently frivolous or false.’”). No error occurred, such as sentencing beyond the statutory maximum, that would warrant setting aside the waiver. See Section (3), *infra*. Nor has Petitioner demonstrated that the Court exceeded its jurisdiction.

Petitioner’s post-conviction challenges were waived by Petitioner’s knowing and voluntary guilty plea and post-conviction waiver, and therefore, the instant § 2255 Motion to Vacate is subject to dismissal with prejudice.

(2) Procedural Default

“Habeas review is an extraordinary remedy and will not be allowed to do service for an appeal.” Bousley v. United States, 523 U.S. 614, 621 (1998) (internal citations omitted); United States v. Sanders, 247 F.3d 139, 144 (4th Cir. 2001). In order to collaterally attack a conviction or sentence based upon errors that could have been but were not pursued on direct appeal, a petitioner must show cause and actual prejudice resulting from the errors of which he complains or he must demonstrate that a miscarriage of justice would result from the refusal of the court to entertain the collateral attack. See United States v. Frady, 456 U.S. 152, 167-68 (1982); United States v. Mikalajunas, 186 F.3d 490, 492–93 (4th Cir. 1999); United States v. Maybeck, 23 F.3d 888, 891-92 (4th Cir. 1994).

A novel constitutional claim can operate as the equivalent of “cause” when: (1) the United States Supreme Court explicitly overrules one of its precedents; (2) a decision overturns a longstanding and widespread practice to which the Supreme Court has not spoken, but which a near-unanimous body of lower court authority has expressly approved; and (3) a decision disapproves a practice that the Supreme Court arguably has sanctioned in prior cases. Reed v. Ross, 468 U.S. 1, 17 (1984); see Casper v. United States, 2016 WL 3583814 (W.D.N.C. July 1, 2016) (applying Reed to find “cause” to excuse procedural default of an unappealed Johnson claim). Actual prejudice is then shown by demonstrating that the error worked to petitioner's “actual and substantial disadvantage,” rather than just creating a possibility of prejudice. See Satcher v. Pruett, 126 F.3d 561, 572 (4th Cir. 1997) (quoting Murray v. Carrier, 477 U.S. 478, 494 (1986)). In order to demonstrate that a miscarriage of justice would result from the refusal of the court to entertain the collateral attack, a petitioner must show actual innocence by clear and convincing evidence. See Murray, 477 U.S. at 496.

Petitioner did not raise the instant claims on direct appeal. He has failed to demonstrate any exception to avoid the procedural default by showing cause and prejudice³ or actual innocence. See Section (3), *infra*. Petitioner's claims are therefore procedurally defaulted from collateral review and are subject to dismissal with prejudice.

(3) Merits

Even if Petitioner's claims were not waived and procedurally defaulted, they would fail on the merits. Petitioner contends that his § 924(c) convictions are invalid under Johnson v. United States, 135 S.Ct. 2551 (2015) and United States v. Davis, 139 S.Ct. 782 (2019).

In Johnson, the United States Supreme Court announced that the Armed Career Criminal Act's ("ACCA") residual clause⁴ is void for vagueness, which is a retroactively applicable right. *Id.*; Welch v. United States, 136 S.Ct. 1257, 1265 (2016). The Supreme Court recently held that § 924(c)(3)(B)'s residual clause⁵ is unconstitutionally vague under the principles set forth in Johnson. Davis, 139 S.Ct. at 782.

Whether an offense qualifies as a crime of violence under § 924(c)(3)(A)'s force clause requires application of the categorical approach or the modified categorical approach depending on the nature of the offense. See Davis, 139 S.Ct. at 2325-26. The categorical approach "focuses

³ Assuming *arguendo* that novel case law provides "cause," Petitioner cannot demonstrate prejudice because his § 2255 claims are meritless for the reasons set forth in Section (3), *infra*.

⁴ ACCA defines a "violent felony" as any felony that: "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is burglary, arson, or extortion, involves use of explosives, *or otherwise involves conduct that presents a serious potential risk of physical injury to another.*" 18 U.S.C.A. § 924(e)(2)(B) (emphasis added). The italicized portion of the definition is referred to as the ACCA residual clause.

⁵ Section 924(c) provides for enhanced sentencing for any person who uses or carries a firearm or possesses a firearm in furtherance of any crime of violence or drug trafficking crime. A "crime of violence" is defined under § 924(c)(3) as a felony that: "(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) *that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.*" 18 U.S.C. § 924 (emphasis added). The italicized portion of the definition is referred to as the § 924(c) residual clause.

on the *elements* of the prior offense rather than the *conduct* underlying the conviction.” United States v. Mathis, 932 F.3d 242, 264 (4th Cir. 2019) (quoting United States v. Cabrera-Umanzor, 728 F.3d 347, 350 (4th Cir. 2013)). In a narrow range of cases involving statutes that are comprised of “multiple, alternative versions of the crime,” the modified categorical approach is applied. Descamps v. United States, 570 U.S. 254, 261-62, 133 S.Ct. 2276 (2013) (citing Taylor v. United States, 495 U.S. 575, 602, 110 S.Ct. 2143 (1990)). When confronted with such a “divisible” statute, a court can rely on certain underlying documents to determine “what crime, with what element” formed the basis of the defendant’s conviction. Shepard v. United States, 544 U.S. 13, 26, 125 S.Ct. 1254 (2005). Shepard-approved documents include the charging document, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record of this information. This may include those portions of the PSR that “bear[] the earmarks of derivation from Shepard-approved sources....” United States v. Thompson, 421 F.3d 278, 285 (4th Cir. 2005) (holding that a PSR can be used in ACCA determinations where they bear the earmarks of derivation from approved sources, particularly where the defendant never objected to the propriety of the source material or its accuracy). However, portions of the PSR that recount the circumstances of prior offenses and do not bear the earmarks of Shepard-approved sources may not be relied on. See United States v. Boykin, 669 F.3d 467 (4th Cir. 2012) (it was plain error for the court to rely on the PSR to determine whether two prior convictions occurred on separate occasions for purpose of ACCA where nothing in the records showed that the recounting of the circumstances surrounding the two convictions set forth in the PSR came from Shepard-approved sources).

Petitioner's § 924(c) charges are based on VICAR violations that refer to North Carolina felonious assault with a deadly weapon, N.C. General Statutes § 14-32. The VICAR statute punishes certain violent acts committed by a defendant for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity. 18 U.S.C. 1959(a); United States v. Fiel, 35 F.3d 997, 1003 (4th Cir. 1994). Section 1959(a) is divisible by subsection and therefore the modified categorical approach applies. See United States v. McCollum, 885 F.3d 300, 305-07 (4th Cir. 2018) (implying that the VICAR statute is divisible); Manners v. United States, 947 F.3d 377 (6th Cir. 2020) (holding that the VICAR statute is divisible and concluding that § 1959(a)(3) is categorically a crime of violence for purposes of § 924(c)).

The North Carolina statute at issue addresses felonious assault with a deadly weapon with intent to kill or inflicting serious injury:

- (a) Any person who assaults another person with a deadly weapon with intent to kill and inflicts serious injury ["AWDWIKISI"] shall be punished as a Class C felon.
- (b) Any person who assaults another person with a deadly weapon and inflicts serious injury ["AWDWISI"] shall be punished as a Class E felon.
- (c) Any person who assaults another person with a deadly weapon with intent to kill ["AWDWIK"] shall be punished as a Class E felon.

N.C.G.S. § 14-32.

Subsections (a),⁶ (b),⁷ and (c)⁸ each require a separate set of elements and therefore § 14-32 is divisible. See Mathis v. United States, 136 S.Ct. 2243, 2249 (2016) (a statute is divisible when it includes “alternative elements” defining distinct crimes, as opposed to “various factual means of committing a single element” upon which a jury need not unanimously agree). Cf. United States v. Vinson, 805 F.3d 120, 124-25 (4th Cir. 2015) (noting various forms of assault under North Carolina law but declining to consider divisibility); United States v. Mills, 917 F.3d 324, 329-30 (4th Cir. 2019) (expressing doubt regarding the trial court’s conclusion that § 14-32(b) is a crime of violence under the sentencing guidelines after finding that subsection (b) is not *itself* divisible by *mens rea*, but declining to resolve the issue because any error was harmless).

As both the VICAR statute and § 14-32 are divisible, the Court may consider the relevant Shepard documents to determine whether the VICAR violations in this case satisfy § 924(c)’s force clause.

The Third Superseding Indictment, a Shepard-approved source, indicates that Petitioner pled guilty to § 1959(a)(3) by “unlawfully and **knowingly assault[ing]**” the victims. (3:08-cr-134, Doc. No. 623) (emphasis added).

The elements of § 1959(a)(3) are: (1) an assault; (2) with a dangerous weapon; (3) in furtherance of racketeering activity. Manners, 947 F.3d at 377. Common law assault is the “(1)

⁶ See NC Pattern Jury Inst. - Crim. 208.10 (AWDWIKISI § 14-32(a) requires proof that: (1) defendant assaulted the victim intentionally; (2) the defendant used a deadly weapon; (3) the defendant had the specific intent to kill the victim; and (4) the defendant inflicted serious injury); State v. King, 468 S.E.2d 232, 343, N.C. 29 (1996) (same).

⁷ See NC Pattern Jury Inst. - Crim. 208.15 (AWDWISI § 14-32(b) requires proof that: (1) the defendant assaulted the victim intentionally; (2) the defendant used a deadly weapon; and (3) the defendant inflicted serious injury upon the victim); State v. Anderson, 222 N.C.App. 138, 730 S.E.2d 262 (2012) (same).

⁸ See NC Pattern Jury Inst. - Crim. 208.25 (AWDWIK § 14-32(c) requires proof that: (1) defendant assaulted the victim intentionally; (2) the defendant used a deadly weapon; and (3) the defendant had the specific intent to kill the victim); State v. Garris, 191 N.C.App. 276, 663 S.E.2d 340 (2008) (same).

willful attempt to inflict injury upon the person of another ... or (2) a threat to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm.” Kinard v. United States, 2017 WL 4350983 at *5 (W.D.N.C. Sept. 29, 2017). Section 1959(a)(3) heightens simple assault by additionally requiring the use of a dangerous weapon, that is, an object with capacity to endanger life or inflict serious bodily harm. See United States v. Sturgis, 48 F.3d 784, 787 (4th Cir. 1995). By requiring both common-law assault and the use of a dangerous weapon, § 1959(a)(3) has as an element the use, attempted use, or threatened use of physical force against the person of another. See generally United States v. Bryant, 949 F.3d 168, 180 (4th Cir. 2020) (assault with intent to rob, steal, or purloin a postal employee by placing their life in jeopardy by using a dangerous weapon in violation of 18 U.S.C. § 2114(a) is categorically a crime of violence under § 924(c)’s force clause because the additional “life-in-jeopardy-with-a-dangerous-weapon element” transforms such an assault into a crime of violence); see, e.g., Cisneros v. United States, 2019 WL 6048044 (W.D.N.C. Nov. 14, 2019) (concluding that a violation of § 1959(a)(3) categorically qualifies as a crime of violence under § 924(c)’s force clause); Franklin v. United States, 2018 WL 3094888 (W.D.N.C. June 22, 2018) (concluding that a § 924(c) violation based on VICAR assault with a dangerous weapon in aid of racketeering and aiding and abetting is a violent felony under ACCA’s force clause); United States v. Mills, 378 F.Supp.3d 563 (E.D. Mich. April 30, 2019) (assault with a dangerous weapon in aid of racketeering under VICAR is a crime of violence under § 924(c)’s force clause); United States v. Jones, 2017 WL 3725632 (W.D. Va. Aug. 29, 2017) (same); Cousins v. United States, 198 F.Supp.3d 621 (E.D. Va. 2016) (same).

Petitioner’s guilty plea to violating § 1959(a)(3) through *knowing* assault satisfies the federal common law definition of assault and includes the additional element of doing so with a

dangerous weapon. See United States v. Nelson, 484 F.3d 257, 260 (4th Cir. 2007) (a knowing and voluntary guilty plea to a § 924(c) offense admits all the material elements of the crime, *i.e.*, that he possessed the firearm and did so in relation to the predicate offense). The § 1959(a)(3) offenses charged in Counts (35) and (39) thus categorically qualify as crimes of violence under § 924(c)’s force clause and Counts (36) and (40) are valid notwithstanding Johnson and Davis.

This outcome is not altered by the Indictment’s reference to § 14-32. See, e.g., Mathis, 932 F.3d at 242 (examining Virginia first-degree murder and kidnapping to determine whether the VICAR offenses upon which they rely satisfy § 924(c)’s force clause). Cf. Moore v. United States, 2019 WL 5152777 (6th Cir. Feb. 6, 2019) (a § 924(c) count referred to a VICAR charge which, in turn, referred to a state assault statute, but the offense underlying the § 924(c) count was ultimately a violation § 1959 which is categorically a crime of violence under § 924(c)’s force clause). North Carolina law provides that an assault is an “intentional attempt, by violence, to do injury to the person of another.” State v. Britt, 270 N.C. 416, 154 S.E.2d 519, 521 (1967). Subsections (a) and (c) include the element of “intent to kill” whereas subsection (b)’s intent element can be established through proof of culpable negligence. See State v. Jones, 353 N.C. 159, 538 S.E.2d 917, 923 (2000); Vinson, 805 F.3d at 126.

Although § 14-32(b) has a lower intent requirement than generic assault, the § 1959(a)(3) offenses in Counts (35) and (39) nevertheless qualify as crimes of violence. The Indictment’s charge of “knowing” assault in violation of § 14-32 reveals the inclusion of an intent element beyond culpable negligence. This indicates that the § 14-32 violations necessarily refer to subsection (a) or (c), which require an intent to kill, rather than subsection (b), which requires only culpable negligence. See generally United States v. Bailey, 444 U.S. 394, 405, 100 S.Ct. 624 (1980) (“knowledge” corresponds loosely with the concept of general intent). The instant case is

therefore distinguishable from United States v. Simmons, 917 F.3d 312 (4th Cir. 2019), in which the Fourth Circuit found that North Carolina assault with a deadly weapon on a government official (“AWDWOGO”) is not categorically a crime of violence under the sentencing guidelines. The AWDWOGO statute at issue in Simmons does not include any intent element and thus relies exclusively on assault under North Carolina common law that can be satisfied by culpable negligence. See N.C. Gen. Stat. § 14-34.2. The Court can determine that Petitioner’s § 14-32 offenses were under subsections (a) or (c), which both contain the “intent to kill” element, and therefore Simmons does not dictate the result here. The Court can exclude § 14-32(b) as the offense underlying Petitioner’s VICAR counts and therefore it need not resort to a “least culpable conduct” analysis as urged by the Petitioner.

Further support for this conclusion can be found in the PSR’s criminal history section. It indicates that Petitioner was charged with “Assault with Deadly Weapon Intent to Kill, Inflict Serious Injury” for the February 16, 2008 incident underlying the VICAR offense in Count (39) and, in turn, the § 924(c) offense in Count (40).⁹ (3:08-cr-134, Doc. No. 1295 at ¶ 116). This portion of the PSR bears the earmarks of reliance on Shepard-approved documents. It refers to the North Carolina case number, the relevant charge, and the disposition of the North Carolina case. Petitioner did not object to this portion of the PSR and does not allege that it is inaccurate. See Thompson, 421 F.3d at 285. The Court can therefore rely upon this portion of the PSR and can conclude, without referring to the underlying facts of the state offense, that the offense underlying Count (40) was AWDWIKISI under North Carolina General Statutes § 14-32(a). AWDWIKISI is “categorically a violent felony” under the force clause of ACCA because proof of a specific intent

⁹ The PSR refers to paragraph 51 of the offense conduct section whereas the February 16, 2008 offense is actually contained in paragraph 52 of the final PSR. The February 16, 2008 offense appeared in paragraph 51 of the draft PSR. (3:08-cr-134, Doc. No. 1089 at ¶ 51).

to kill is an essential element of an AWDWIKISI conviction. See United States v. Townsend, 886 F.3d 441, 448 (4th Cir. 2018) (ACCA analysis). There is no reason to reach a different conclusion under the nearly identical force clause of § 924(c). Thus the VICAR offense charged in Count (39) is categorically a crime of violence and for this additional reason, Petitioner's challenge to Count (40) is meritless.

The Court therefore concludes that, even if Petitioner's claims were not procedurally defaulted and waived, they would fail on the merits.

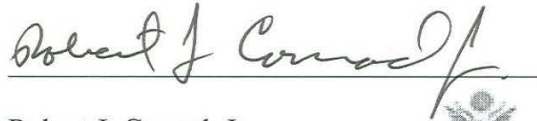
IV. CONCLUSION

For the foregoing reasons, the § 2255 Motion to Vacate is dismissed and denied and the Government's Motion to Dismiss is granted.

IT IS, THEREFORE, ORDERED that:

1. Petitioner's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, (Doc. No. 1), is **DISMISSED** with prejudice and **DENIED**.
2. The Government's Motion to Dismiss, (Doc. No. 12), is **GRANTED**.
3. **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right).

Signed: March 24, 2020

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge



**United States District Court
Western District of North Carolina
Charlotte Division**

Cesar Yoaldo Castillo,	)	JUDGMENT IN CASE
)	
Petitioner(s),	)	3:16-cv-00431-RJC
	)	3:08-cr-00134-RJC
vs.)	
)	
USA,)	
Respondent(s).)	


DECISION BY COURT. This action having come before the Court and a decision having been rendered;

IT IS ORDERED AND ADJUDGED that Judgment is hereby entered in accordance with the Court's March 24, 2020 Order.

March 24, 2020



Frank G. Johns, Clerk
United States District Court



United States District Court
For The Western District of North Carolina

UNITED STATES OF AMERICA

V.

CESAR YOALDO CASTILLO

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: DNCW308CR000134-015

USM Number: 23081-058

James Quander, Jr.

Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) 1sss, 35sss, 36sss, 37sss, 39sss, 40sss.
 — Pled nolo contendere to count(s) which was accepted by the court.
 — Was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Counts</u>
18:1962(d)	Conspiracy to commit racketeering	7/27/09	1sss
18:1959(a)(3)	Assault with a dangerous weapon in aid of racketeering and aiding and abetting same (18:2)	2/3/08	35sss, 37sss
18:924(c)	Use and carrying of a firearm during and in relation to a crime of violence	2/3/08	36sss
18:1959(a)(3)	Assault with a dangerous weapon in aid of racketeering and aiding and abetting same (18:2)	2/16/08	39sss
18:924(c)	Use and carrying of a firearm during and in relation to a crime of violence	2/16/08	40sss

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U.S.C. § 3553(a).

— The defendant has been found not guilty on count(s) .
X Count(s) 1, 1s, 1ss, 29, 30, 31, 32, 33, 34, 35s, 35ss, 36s, 36ss, 37s, 38s, 38ss, 38sss, 39s, 39ss, 40, 40ss, 41, 46s, 46ss, 46sss, 47s, 47ss,
47sss (are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: 12/21/10



Robert J. Conrad, Jr.
 Chief United States District Judge

Date: January 7, 2011

Defendant: CESAR YOALDO CASTILLO
Case Number: DNCW308CR000134-015

Judgment-Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Counts 1sss, 35sss, 37sss & 39sss: TWO (2) MONTHS each count to run concurrently. Count 36sss: NINETY (90) MONTHS to run consecutively to Counts 1sss, 35sss, 37sss & 39sss. Count 40sss: THREE HUNDRED (300) MONTHS to run consecutively to Counts 1sss, 35sss, 37sss, 39sss & 36sss FOR A TOTAL O F THREE HUNDRED NINETY TWO (392) MONTHS.

☒ The Court makes the following recommendations to the Bureau of Prisons:
 Participation in educational and/or vocational programs.
 Participation in any available substance abuse treatment program. If eligible receive benefits of 18:3621(e)(2).
 Participation in Inmate Financial Responsibility Program.
 Defendant be separated from any co-defendants while in BOP custody.

☒ 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 pm 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 Marshal

Defendant: CESAR YOALDO CASTILLO
Case Number: DNCW308CR000134-015

Judgment-Page 3 of 6**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of Counts 1sss, 36sss & 40sss: FIVE (5) YEARS. Counts 35sss, 37sss & 39sss: THREE (3) YEARS. All such counts to run concurrently.

— The condition for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court and any additional conditions ordered.

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall refrain from possessing a firearm, destructive device, or other dangerous weapon.
3. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release on a schedule to be established by the Court.
4. The defendant shall provide access to any personal or business financial information as requested by the probation officer.
5. The defendant shall not acquire any new lines of credit unless authorized to do so in advance by the probation officer.
6. The defendant shall not leave the Western District of North Carolina without the permission of the Court or probation officer.
7. The defendant shall report in person to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
8. A defendant on supervised release shall report in person to the probation officer in the district to which he or she is released within 72 hours of release from custody of the Bureau of Prisons.
9. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
10. The defendant shall support his or her dependents and meet other family responsibilities.
11. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other activities authorized by the probation officer.
12. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.
13. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as duly prescribed by a licensed physician.
14. The defendant shall participate in a program of testing and treatment or both for substance abuse if directed to do so by the probation officer, until such time as the defendant is released from the program by the probation officer; provided, however, that defendant shall submit to a drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter for use of any controlled substance, subject to the provisions of 18:3563(a)(5) or 18:3583(d), respectively.
15. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
16. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
17. The defendant shall submit his person, residence, office, vehicle and/or any computer system including computer data storage media, or any electronic device capable of storing, retrieving, and/or accessing data to which they have access or control, to a search, from time to time, conducted by any U.S. Probation Officer and such other law enforcement personnel as the probation officer may deem advisable, without a warrant. The defendant shall warn other residents or occupants that such premises or vehicle may be subject to searches pursuant to this condition.
18. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed by the probation officer.
19. The defendant shall notify the probation officer within 72 hours of defendant's being arrested or questioned by a law enforcement officer.
20. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
21. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
22. If the instant offense was committed on or after 4/24/96, the defendant shall notify the probation officer of any material changes in defendant's economic circumstances which may affect the defendant's ability to pay any monetary penalty.
23. If home confinement (home detention, home incarceration or curfew) is included you may be required to pay all or part of the cost of the electronic monitoring or other location verification system program based upon your ability to pay as determined by the probation officer.
24. The defendant shall cooperate in the collection of DNA as directed by the probation officer.
25. The defendant shall participate in transitional support services under the guidance and supervision of the U.S. Probation Officer. The defendant shall remain in the services until satisfactorily discharged by the service provider and/or with the approval of the U.S. Probation Officer.

ADDITIONAL CONDITIONS:

25. The defendant shall surrender to a duly authorized Immigration official for deportation.
26. If ordered deported the defendant shall remain outside the U.S.

Defendant: CESAR YOALDO CASTILLO
Case Number: DNCW308CR000134-015

Judgment-Page 4 of 6**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	FINE	RESTITUTION
\$600.00	\$0.00	\$0.00

FINE

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

X The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

X The interest requirement is waived.

 The interest requirement is modified as follows:

COURT APPOINTED COUNSEL FEES

 The defendant shall pay court appointed counsel fees.

X The defendant shall pay \$2,500.00 towards court appointed fees.

Defendant: CESAR YOALDO CASTILLO
Case Number: DNCW308CR000134-015

Judgment-Page 5 of 6**SCHEDULE OF PAYMENTS**

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

- A ☐ Lump sum payment of \$ _____ Due immediately, balance due
____ Not later than _____, or
____ In accordance ☐ (C), ☐ (D) below; or
- B ☒ Payment to begin immediately (may be combined with ☐ (C), ☒ (D) below); or
- C ☐ Payment in equal _____ (E.g. weekly, monthly, quarterly) installments of \$ _____ To commence _____
____ (E.g. 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$ 50.00 To commence 60
60 (E.g. 30 or 60 days) after release from imprisonment to a term of supervision. In the event the entire
amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the
U.S. Probation Officer shall pursue collection of the amount due, and may request the court to establish or
modify a payment schedule if appropriate 18 U.S.C. § 3572.

Special instructions regarding the payment of criminal monetary penalties:

- ☐ The defendant shall pay the cost of prosecution.
☐ The defendant shall pay the following court costs:
☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
any property seized as a result of this investigation.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, 401 West Trade Street, Room 210, Charlotte, NC 28202, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

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

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

Defendant: CESAR YOALDO CASTILLO
Case Number: DNCW308CR000134-015

Judgment-Page 6 of 6

STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of _____ months, commencing on _____ .

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

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date: _____
Defendant

(Signed) _____ Date: _____
U.S. Probation Office/Designated Witness

FILED: April 26, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6767
(3:08-cr-00134-RJC-15)
(3:16-cv-00431-RJC)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CESAR YOALDO CASTILLO

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

JUL 27 2009

**U.S. DISTRICT COURT
W. DIST. OF N.C.**

UNITED STATES OF AMERICA)	
	)	DOCKET NO. 3:08-CR-134-RJC
v.)	
	)	<u>THIRD SUPERSEDING BILL OF</u>
(1) MANUEL DE JESUS AYALA,	)	<u>INDICTMENT</u>
a/k/a "Chacua")	
(2) ALEJANDRO ENRIQUE RAMIREZ UMANA,	)	Violations:
a/k/a "Wizard")	
"Lobo"	)	8 U.S.C. § 1326
(3) HEVERTH ULISES CASTELLON,	)	18 U.S.C. § 2
a/k/a "Misterio"	)	18 U.S.C. § 3
"Sailor"	)	18 U.S.C. § 371
(4) JULIO CESAR ROSALES LOPEZ,	)	18 U.S.C. § 922(g)(1)
a/k/a "Stiler"	)	18 U.S.C. § 922(g)(5)
(5) JUAN GILBERTO VILLALOBOS,	)	18 U.S.C. § 924(c)
a/k/a "Smoke"	)	18 U.S.C. § 924(j)
"Smokey"	)	18 U.S.C. § 1501
(6) ELVIN PASTOR FERNANDEZ-GRADIS,	)	18 U.S.C. § 1512(b)(1)
a/k/a "Tigre"	)	18 U.S.C. § 1951
"Flaco"	)	18 U.S.C. § 1959(a)(1)
"Juan Alberto Irias"	)	18 U.S.C. § 1959(a)(3)
"Freddy"	)	18 U.S.C. § 1962(d)
(7) JUAN RUBEN VELA GARCIA,	)	21 U.S.C. § 841(a)(1)
a/k/a "Mariachi"	)	21 U.S.C. § 843(b)
(8) JOSE AMILCAR GARCIA-BONILLA,	)	21 U.S.C. § 846
a/k/a "Psicopata,")	
"Sicario")	
"Lucio Caesario")	
"Jose Luis Ferufino")	
(9) YELSON OLIDER CASTRO-LICONA,)	
a/k/a "Diablo")	
(10) CARLOS FERUFINO-BONILLA,)	
a/k/a "Tigre")	
(11) NELSON HERNANDEZ-AYALA,)	
a/k/a "Sixteen")	
(12) MARIO MELGAR-DIAZ,)	
a/k/a "Nino")	
(13) ALEXI RICARDO RAMOS,)	
a/k/a "Pajaro")	
(14) CARLOS ROBERTO FIGUEROA-PINEDA,)	
a/k/a "Drogo")	

(15) CESAR YOALDO CASTILLO,)	
a/k/a "Chino")	
(16) EDGAR MIGUEL GRANADOS-ALVAREZ,)	
a/k/a "Gorilon")	
"Alexander Granados")	
(17) MICHAEL STEVEN MENA,)	
a/k/a "Cholo")	
(18) JOHNNY ELIAS GONZALEZ,)	
a/k/a "Solo")	
(19) JAIME SANDOVAL,)	
a/k/a "Pelon")	
(20) SANTOS CANALES-REYES,)	
a/k/a "Chicago")	
(21) JOSE EFRAIN AYALA-URBINA,)	
a/k/a "Peligroso")	
(22) OSCAR MANUEL)	
MORAL-HERNANDEZ,)	
a/k/a "Truchon")	
(23) SANTOS ANIBAL CABALLERO)	
FERNANDEZ,)	
a/k/a "Garra")	
(24) MANUEL CRUZ,)	
a/k/a "Silencioso")	
(25) JAVIER MOLINA,)	
a/k/a "Big Psycho")	
"Gringo")	
(26) MARIO GUARJARDO-GARCIA,)	
a/k/a "Speedy")	
"Iran Guerrero-Gomez")	
"Luis Angel Galindo")	
)	

THE GRAND JURY CHARGES:

COUNT ONE

(Racketeer Influenced Corrupt Organization–RICO Conspiracy)

The Grand Jury for the Western District of North Carolina charges that:

Introduction

1. La Mara Salvatrucha, also known as the MS-13 gang (hereafter "MS-13"), is a gang composed primarily of immigrants or descendants of immigrants from El Salvador, with members operating throughout North Carolina including Mecklenburg, Guilford, Wake, and Durham counties, and elsewhere.

2. The name "Mara Salvatrucha" is a combination of several slang terms. In the most common usage, the word "Mara" is the term used in El Salvador for "gang." The phrase "Salvatrucha" is a combination of the words "Salva," which is an abbreviation for "Salvadoran," and "trucha," which is a slang term for "fear us," "look out," or "heads up."

3. In the United States, MS-13 originated in Los Angeles, California, where MS-13 members engaged in turf wars for the control of drug-distribution locations. MS-13 quickly spread to states across the country, including North Carolina and elsewhere.

4. MS-13 is a national and international criminal organization with over 6,000 members in the United States regularly conducting gang activities in at least forty-two states and the District of Columbia, as well as over 30,000 members internationally, mostly in Mexico, Honduras, Guatemala, and El Salvador. MS-13 is one of the largest street gangs in the United States. Gang members actively recruit members, including juveniles, from communities with a large number of immigrants from El Salvador. Members, however, can also have ethnic heritage from

other Central and Latin American countries. In the United States, MS-13 has been functioning since at least the 1980s.

5. At all times relevant to this Indictment, the following defendants were members of MS-13:

- (1) MANUEL DE JESUS AYALA,
a/k/a "Chacua"
- (2) ALEJANDRO ENRIQUE RAMIREZ UMANA,
a/k/a "Wizard"
"Lobo"
- (3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio"
"Sailor"
- (4) JULIO CESAR ROSALES LOPEZ,
a/k/a "Stiler"
- (5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke"
"Smokey"
- (6) ELVIN PASTOR FERNANDEZ-GRADIS,
a/k/a "Tigre"
"Flaco"
"Juan Alberto Irias"
"Freddy"
- (7) JUAN RUBEN VELA GARCIA,
a/k/a "Mariachi"
- (8) JOSE AMILCAR GARCIA-BONILLA,
a/k/a "Psicopata"
"Sicario"
"Lucio Casario"
"Jose Luis Ferufino"
- (9) YELSON OLIDER CASTRO-LICONA,
a/k/a "Diablo"
- (10) CARLOS FERUFINO-BONILLA,
a/k/a "Tigre"
- (11) NELSON HERNANDEZ-AYALA,
a/k/a "Sixteen"
- (12) MARIO MELGAR-DIAZ,
a/k/a "Nino"
- (13) ALEXI RICARDO RAMOS,
a/k/a "Pajaro"

- (14) CARLOS ROBERTO FIGUEROA-PINEDA,
a/k/a "Drogo"
(15) CESAR YOALDO CASTILLO,
a/k/a "Chino"
(16) EDGAR MIGUEL GRANADOS-ALVAREZ,
a/k/a "Gorilon"
"Alexander Granados"
(17) MICHAEL STEVEN MENA,
a/k/a "Cholo"
(18) JOHNNY ELIAS GONZALEZ,
a/k/a "Solo"
(19) JAIME SANDOVAL,
a/k/a "Pelon"
(20) SANTOS CANALES-REYES,
a/k/a "Chicago"
(21) JOSE EFRAIN AYALA-URBINA,
a/k/a "Peligroso"
(22) OSCAR MANUEL MORAL-HERNANDEZ,
a/k/a "Truchon"
(23) SANTOS ANIBAL CABALLERO FERNANDEZ,
a/k/a "Garra"
(24) MANUEL CRUZ,
a/k/a "Silencioso"
(25) JAVIER MOLINA,
a/k/a "Big Psycho"
"Gringo"
(26) MARIO GUARJARDO-GARCIA,
a/k/a "Speedy"
"Iran Guerrero-Gomez"
"Luis Angel Galindo"

6. At all times relevant to this Indictment, in order to join MS-13, members generally were required to complete an initiation process, often referred to as being "jumped in" or "beat in" to the gang. During that initiation, other members of MS-13 would beat the new member, usually until a gang member finished counting aloud to thirteen.

7. At all times relevant to this Indictment, some members of MS-13 signified their membership by wearing tattoos reading "MARA SALVATRUCHA," "MS," or "MS-13," or similar

slogans, often written in gothic lettering. The gang colors of MS-13 are blue, black, and white, and members often wore clothing of these colors often bearing the number "13," or with numbers that, when added together, totaled 13, such as "76." Also, MS-13 members from time to time marked their territory or signified their presence through the use of graffiti with the words "MS" or other identifying slogans. More recently, some MS-13 members have more discreetly and less publicly signified their membership by hiding and avoiding such clothing and tattoos, in order to avoid detection by law enforcement. MS-13 members refer to one another by their gang names or other nicknames and often do not know fellow gang members except by these gang names.

8. At all times relevant to the Indictment, members of MS-13 were expected to protect the name, reputation, and status of the gang and its members from rival gang members or any other person. MS-13 members believe that all individuals should show respect and deference to the gang and its members. To protect the gang and to enhance its reputation, MS-13 members are expected to use any means necessary to get respect from those who show disrespect, including acts of intimidation and violence.

9. At all times relevant to this Indictment, members of MS-13 engaged in criminal activity including drug distribution, murders, assaults, robberies, and obstructing justice in the form of threatening and intimidating witnesses that they believed to be cooperating with law enforcement. MS-13 members were sometimes required to commit acts of violence to maintain membership and discipline within the gang, including violence against rival gangs. Participation in criminal activity by an MS-13 member, particularly violent acts directed at rival gangs or as directed by the gang leadership, increased the level of respect accorded that member, resulting in that

member maintaining or increasing his position in the gang, and possibly resulting in a promotion to a leadership position.

10. At all times relevant to this Indictment, MS-13 was organized in the Western District of North Carolina and elsewhere in "cliques," that is smaller groups operating in a specific region, city, or part of a city. The MS-13 cliques worked together cooperatively to engage in criminal activity and assist one another in avoiding detection by law enforcement. The cliques operated under the umbrella rules of MS-13. In North Carolina, some of these cliques are identified by names such as "Centrales," "South Boulevard," "Hollywood," "Coronado," "Charlotes Loco Salvatrucha," and "Charlotte Locotes" and other names both known and unknown to the Grand Jury.

11. At all times relevant to this Indictment, MS-13 members attended meetings together on a regular basis. Leaders of cliques of MS-13 from across the United States, and within regions of North Carolina, met to discuss gang rules and gang business, to resolve problems or issues among gang members, and to unite gang members from across the country. In Charlotte, Greensboro, and Durham, North Carolina, and in Columbia, South Carolina, and elsewhere, members met to discuss, plan, and report on: gang organizational issues; illegal activity on behalf of MS-13; acts of violence committed by MS-13 members against rival gang members and others with the goal of achieving control of territory; law enforcement activity against MS-13 members; and those suspected of cooperating with law enforcement, among other subjects. Sometime members from other states attended North Carolina MS-13 meetings or sought assistance from MS-13 members in North Carolina.

12. The leaders of various MS-13 groups are frequently called “shot callers” or “voices.” Sometimes, the leaders, some of whom are incarcerated in El Salvador, exerted authority through the use of telephones. Leaders acted to resolve disputes, address organizational issues, and participate in gang decisions such as whether to assault or murder those suspected of cooperating with law enforcement.

13. At all times relevant to this Indictment, MS-13 members were expected to pay dues. MS-13 members collected dues for the benefit of, and to be provided to, MS-13 gang members and to support the gang’s criminal endeavors. On more than one occasion, MS-13 members in North Carolina transferred money to MS-13 members incarcerated in prison in El Salvador.

14. At all times relevant to this Indictment, MS-13 members communicated about gang activities with other MS-13 members in North Carolina and elsewhere, using mobile telephones and other modes of communication. Additionally, MS-13 members used transnational and international money wire transfers to conduct and promote gang activities.

The Racketeering Enterprise

15. MS-13, including its leadership, members and associates, in the Western District of North Carolina, El Salvador, and elsewhere, constituted an "enterprise" as defined in Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact that engaged in, and whose activities affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit that had a common purpose, as described in Paragraph 16 below.

Purposes of the Enterprise

16. The purposes of the MS-13 enterprise included the following:
- a. Preserving and protecting the power, territory, reputation, and profits of the enterprise through the use of intimidation, violence, threats of violence, assaults, and murder;
 - b. Promoting and enhancing the enterprise and its members' and associates' activities, including, but not limited to, drug trafficking, robberies, extortions, and other criminal activities;
 - c. Keeping victims, potential victims, and community members in fear of the enterprise and its members and associates through violence and threats of violence;
 - d. Providing financial support and information to gang members, including those incarcerated in the United States and El Salvador; and
 - e. Providing assistance to other gang members who committed crimes for and on behalf of the gang, to hinder, obstruct, and prevent law enforcement officers from identifying, apprehending, and successfully prosecuting and punishing the offenders.

The Racketeering Conspiracy

17. Beginning on a date unknown to the Grand Jury, but from at least in or about 2003, and continuing to the present date, in the Western District of North Carolina and elsewhere, defendants,

(1) MANUEL DE JESUS AYALA,
a/k/a "Chacua"

(2) ALEJANDRO ENRIQUE RAMIREZ UMANA,
a/k/a "Wizard"
"Lobo"

(3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio"
"Sailor"

- (4) JULIO CESAR ROSALES LOPEZ,
a/k/a "Stiler"
- (5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke"
"Smokey"
- (6) ELVIN PASTOR FERNANDEZ-GRADIS,
a/k/a "Tigre"
"Flaco"
"Juan Alberto Irias"
"Freddy"
- (7) JUAN RUBEN VELA GARCIA,
a/k/a "Mariachi"
- (8) JOSE AMILCAR GARCIA-BONILLA,
a/k/a "Psicopata"
"Sicario"
"Lucio Casario"
"Jose Luis Ferufino"
- (9) YELSON OLIDER CASTRO-LICONA,
a/k/a "Diablo"
- (10) CARLOS FERUFINO-BONILLA,
a/k/a "Tigre"
- (11) NELSON HERNANDEZ-AYALA,
a/k/a "Sixteen"
- (12) MARIO MELGAR-DIAZ,
a/k/a "Nino"
- (13) ALEXI RAMOS,
a/k/a "Pajaro"
- (14) CARLOS ROBERTO FIGUEROA-PINEDA,
a/k/a "Drogo"
- (15) CESAR YOALDO CASTILLO,
a/k/a "Chino"
- (16) EDGAR MIGUEL GRANADOS-ALVAREZ,
a/k/a "Gorilon"
"Alexander Granados"
- (17) MICHAEL STEVEN MENA,
a/k/a "Cholo"
- (18) JOHNNY ELIAS GONZALEZ,
a/k/a "Solo"
- (19) JAIME SANDOVAL,
a/k/a "Pelon"
- (20) SANTOS CANALES-REYES,
a/k/a "Chicago"
- (21) JOSE EFRAIN AYALA-URBINA,
a/k/a "Peligroso"

- (22) OSCAR MANUEL MORAL-HERNANDEZ,
a/k/a "Truchon"
(23) SANTOS ANIBAL CABALLERO FERNANDEZ,
a/k/a "Garra"
(24) MANUEL CRUZ,
a/k/a "Silencioso"
(25) JAVIER MOLINA,
a/k/a "Big Psycho"
"Gringo"
(26) MARIO GUARJARDO-GARCIA,
a/k/a "Speedy"
"Iran Guerrero-Gomez"

together with others both known and unknown to the Grand Jury, each being a person employed by and associated with MS-13, an enterprise engaged in, and the activities of which affected, interstate and foreign commerce, did knowingly and intentionally conspire to violate Title 18, United States Code, Section 1962(c), that is to conduct and participate, directly and indirectly, in the affairs of the MS-13 enterprise through a pattern of racketeering activity, as defined in Title 18, United States Code, Sections 1961(1) and (5), which pattern of racketeering activity consisted of multiple acts indictable under the following provisions of federal law:

- i. 18 U.S.C. § 1951 (Hobbs Act Robbery and Extortion);
- ii. 18 U.S.C. § 1503 (Obstruction of Justice);
- iii. 18 U.S.C. § 1512 (Tampering with Witnesses);

and multiple acts involving the following provisions of federal narcotics law:

- i. 21 U.S.C. § 846 (Conspiracy to Distribute and Possess Cocaine and Marijuana);
- ii. 21 U.S.C. § 841(a)(1) (Distribution and Possession with Intent to Distribute Cocaine);
- iii. 21 U.S.C. § 843(b) (Illegal Use of a Communication Facility);

and multiple acts involving offenses chargeable under the following provisions of North Carolina law:

- i. Murder, in violation of North Carolina Gen. Stat. §§14-17 and 14-2.4;
- ii. Robbery, in violation of North Carolina Gen. Stat. §§14-87.1, 14.87, and 14-2.4;
- iii. Extortion, in violation of North Carolina Gen. Stat. §§ 14-118.4 and 14-2.4.

Manner and Means of the Conspiracy

18. It was part of the manner and means of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

19. It was further part of the manner and means of the conspiracy that the defendants, as gang members of MS-13, were required to have and did have regular meetings with other MS-13 gang members to discuss, among other things: structure and organization of the gang; past criminal acts committed against rival gang members and others; MS-13 members who were arrested or incarcerated; the discipline of MS-13 members; police interactions with MS-13 members; the identities of individuals suspected of cooperating with law enforcement and proposed actions to be taken against them; enforcement of gang rules; and plans and agreements regarding the commission of future crimes, to include narcotics distribution, robbery, extortion, murder, illegal possession of firearms and assault, as well as ways to conceal these crimes.

20. It was further part of the manner and means of the conspiracy that the defendants and other members and associates of MS-13 agreed to purchase, maintain, and circulate a collection of firearms for use in criminal activity by MS-13 members.

21. It was further part of the manner and means of the conspiracy that the defendants and other members and associates of MS-13 agreed that acts of violence, including murder and attempted murder and assaults, would be committed by members and associates of MS-13 against rival gang members or others when it suited the enterprise's purposes. MS-13 members also used violence to impose discipline within the gang.

22. It was further part of the manner and means of the conspiracy that the defendants and other members and associates of MS-13 agreed to distribute narcotics, to use the telephone to facilitate narcotics distribution, to commit robberies, and other crimes, and to conceal their criminal activities by obstructing justice, threatening or intimidating witnesses, and other means.

Overt Acts

23. In furtherance of the conspiracy and to achieve the objectives thereof, at least one of the conspirators performed or caused to be performed at least one of the following overt acts, among others, in Charlotte, Mecklenburg County, within the Western District of North Carolina, and elsewhere:

a. On or about June 13, 2003, **MANUEL DE JESUS AYALA, a/k/a "Chacua,"** who was then a leader of MS-13 in Charlotte, and others both known and unknown to the Grand Jury vandalized a Blockbuster store by painting MS-13 graffiti on the wall of the store.

b. On or about April 8, 2004, **MARIO GUARJARDO-GARCIA, a/k/a "Speedy," "Iran Guerrero-Gomez,"** distributed a quantity of marijuana to a person known to the Grand Jury.

c. On or about April 16, 2004, **MARIO GUARJARDO-GARCIA, a/k/a "Speedy," "Iran Guerrero-Gomez,"** distributed a quantity of cocaine to a person known to the Grand Jury.

d. On or about June 15, 2004, **MARIO GUARJARDO-GARCIA, a/k/a "Speedy," "Iran Guerrero-Gomez,"** distributed a quantity of cocaine and a firearm to a person known to the Grand Jury.

e. On or about July 13, 2004, **MARIO GUARJARDO-GARCIA, a/k/a "Speedy," "Iran Guerrero-Gomez,"** distributed a quantity of cocaine and a firearm to a person known to the Grand Jury.

f. On or about October 30, 2004, **JOSE EFRAIN AYALA-URBINA, a/k/a "Peligroso," NELSON HERNANDEZ-AYALA, a/k/a "Sixteen," and ELVIN PASTOR FERNANDEZ-GRADIS, a/k/a "Tigre," a/k/a "Flaco" a/k/a "Juan Alberto Irias," a/k/a "Freddy,"** and others both known and unknown to the Grand Jury held a meeting to discuss MS-13 gang business (activities in furtherance of the enterprise).

g. On or about June 3, 2005, **NELSON HERNANDEZ-AYALA, a/k/a "Sixteen,"** possessed a firearm.

h. On or about August 6, 2005, **JOHNNY ELIAS GONZALEZ, a/k/a "Solo,"** and others both known and unknown to the Grand Jury, committed a robbery against Yonni Alexander Morales-Maradiago, as a result of which the Yonni Alexander Morales-Maradiago was killed.

i. On or about August 19, 2005, in Durham, North Carolina, **MICHAEL STEVEN MENA, a/k/a "Cholo,"** shot Victim No. 1, a person believed to be a rival gang member.

j. On or about March 17, 2006, in Durham, North Carolina, **MICHAEL STEVEN MENA, a/k/a "Cholo,"** and others both known and unknown to the Grand Jury conducted an MS-13 "beat in" to initiate a new member into MS-13.

k. On or about March 24, 2006, in Durham, North Carolina, **MICHAEL STEVEN MENA, a/k/a "Cholo,"** and others both known and unknown to the Grand Jury assaulted a person believed to be a rival gang member.

l. On or about July 12, 2006, **ALEXI RICARDO RAMOS, a/k/a "Pajaro,"** possessed a firearm.

m. On or about August 3, 2006, September 8, 2006, and September 28, 2006, **MARIO MELGAR-DIAZ, a/k/a "Nino,"** distributed quantities of cocaine to a person known to the Grand Jury.

n. On or about October 29, 2006, **SANTOS ANIBAL CABALLERO FERNANDEZ, a/k/a "Garra,"** possessed a firearm.

o. On or about November 28, 2006, **MARIO MELGAR-DIAZ, a/k/a "Nino,"** discussed distributing cocaine with a person known to the Grand Jury.

p. On or about January 22, 2007, **MARIO MELGAR-DIAZ, a/k/a "Nino,"** discussed distributing cocaine with a person known to the Grand Jury.

q. On or about March 19, 2007, **JOSE EFRAIN AYALA-URBINA, a/k/a "Peligroso,"** possessed a firearm.

r. On or about June 8, 2007, **NELSON HERNANDEZ-AYALA, a/k/a "Sixteen,"** discussed distributing cocaine with a person known to the Grand Jury.

s. On or about June 16, 2007, at an MS-13 meeting in Charlotte, **CESAR CASTILLO, a/k/a "Chino," EDGAR MIGUEL GRANADOS-ALVAREZ, a/k/a "Gorilon," MARIO GUARJARDO-GARCIA, a/k/a "Speedy," "Iran Guerrero-Gomez,"** and others both known and unknown to the Grand Jury discussed coordinating their gang activities. At the meeting, MS-13 members from Charlotte and Durham sought each other's assistance with criminal activities including retaliation against rival gang members.

t. On or about July 19, 2007, **NELSON HERNANDEZ-AYALA, a/k/a "Sixteen,"** discussed distributing cocaine with a person known to the Grand Jury. Later that day, **NELSON HERNANDEZ-AYALA, a/k/a "Sixteen," and MARIO GUARJARDO-GARCIA, a/k/a "Speedy," "Iran Guerrero-Gomez,"** distributed a quantity of cocaine to a person known to the Grand Jury.

u. On or about August 6, 2007, in Guilford County, North Carolina, **ALEJANDRO ENRIQUE UMANA, a/k/a "Wizard," "Lobo,"** possessed cocaine.

v. On or about August 10, 2007, **ALEXI RICARDO RAMOS, a/k/a "Pajaro,"** possessed cocaine.

w. On or about October 26, 2007, at the El Vaquero club in Charlotte, an MS-13 meeting was held and attended by **JUAN RUBEN VELA GARCIA, a/k/a "Mariachi," JOSE AMILCAR GARCIA-BONILLA, a/k/a "Psicopata," a/k/a "Sicario," CARLOS FERUFINO-BONILLA, a/k/a "Tigre," YELSON OLIDER CASTRO-LICONA a/k/a "Diablo,"** and others both known and unknown to the Grand Jury. At this meeting, the members discussed gang business (activities in furtherance of the enterprise), including attacking rival gangs, extorting drug dealers in MS-13 territory, and other criminal activity.

x. On or about October 27, 2007, in a wooded area in Mecklenburg County, an MS-13 meeting was held and attended by **JUAN RUBEN VELA GARCIA, a/k/a "Mariachi," JOSE AMILCAR GARCIA-BONILLA, a/k/a "Psicopata," a/k/a "Sicario," CARLOS FERUFINO-BONILLA, a/k/a "Tigre," YELSON OLIDER CASTRO-LICONA, a/k/a "Diablo,"** and others both known and unknown to the Grand Jury. At this meeting, the members discussed gang business (activities in furtherance of the enterprise), such as organizational issues, obtaining guns for the gang, extorting drug dealers, and other criminal activities. After this meeting, gang members held another MS-13 meeting at the El Vaquero club, to discuss various aspects of gang business (activities in furtherance of the enterprise), which was attended by **JUAN RUBEN VELA GARCIA, a/k/a "Mariachi,"** and others both known and unknown to the Grand Jury.

y. On or about November 7, 2007, **MANUEL CRUZ, a/k/a "Silencioso,"** discussed distributing cocaine with a person known to the Grand Jury.

z. On or about November 18, 2007, at the El Vaquero club in Charlotte, an MS-13 meeting was held and attended by **JUAN RUBEN VELA GARCIA, a/k/a "Mariachi," JOSE AMILCAR GARCIA-BONILLA, a/k/a "Psicopata," a/k/a "Sicario," CARLOS FERUFINO-BONILLA, a/k/a "Tigre," YELSON OLIDER CASTRO-LICONA, a/k/a "Diablo," JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey," MANUEL CRUZ, a/k/a "Silencioso," SANTOS CANALES-REYES, a/k/a "Chicago,"** and others both known and unknown to the Grand Jury. At the meeting, the members discussed gang business (activities in furtherance of the enterprise), including obtaining guns for MS-13 and killing rival gang members.

aa. On or about November 23, 2007, in Greensboro, North Carolina, an MS-13 meeting was held and attended by **JUAN RUBEN VELA GARCIA, a/k/a "Mariachi," YELSON OLIDER CASTRO-LICONA, a/k/a "Diablo," ALEJANDRO ENRIQUE UMANA, a/k/a "Wizard," "Lobo," JULIO CESAR ROSALES LOPEZ, a/k/a "Stiler,"** and others both known and unknown to the Grand Jury. At this meeting, the members discussed gang business (activities in furtherance of the enterprise).

bb. On or about November 24, 2007, **JOSE AMILCAR GARCIA-BONILLA, a/k/a "Psicopata," a/k/a "Sicario," CARLOS FERUFINO-BONILLA, a/k/a "Tigre," and YELSON OLIDER CASTRO-LICONA, a/k/a "Diablo,"** conspired to, attempted to, and did rob an individual known to the Grand Jury.

cc. On or about November 26, 2007, **JOSE AMILCAR GARCIA-BONILLA, a/k/a "Psicopata," a/k/a "Sicario," CARLOS FERUFINO-BONILLA, a/k/a "Tigre," and YELSON OLIDER CASTRO-LICONA, a/k/a "Diablo,"** conspired to, attempted to, and did rob a person known to the Grand Jury.

dd. On or about November 28, 2007, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** discussed distributing cocaine with a person known to the Grand Jury.

ee. On or about November 29, 2007, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** distributed a quantity of cocaine to a person known to the Grand Jury. During the cocaine transaction, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** discussed obtaining firearms in support of enterprise activities and other MS-13 gang business (activities in furtherance of the enterprise).

ff. On or about November 30, 2007, **JOSE AMILCAR GARCIA-BONILLA**, a/k/a "Psicopata," a/k/a "Sicario," **CARLOS FERUFINO-BONILLA**, a/k/a "Tigre," **JUAN RUBEN VELA GARCIA**, a/k/a "Mariachi," and **YELSON OLIDER CASTRO-LICONA**, a/k/a "Diablo," conspired and attempted to commit an armed robbery of a known house of prostitution. They later met with **ALEJANDRO ENRIQUE UMANA**, a/k/a "Wizard," "Lobo," **JUAN RUBEN VELA GARCIA**, a/k/a "Mariachi," **JAIME SANDOVAL**, a/k/a "Pelon," and others both known and unknown to the Grand Jury to discuss the attempted armed robbery and other gang business (activities in furtherance of the enterprise).

gg. On or about and between December 6, 2007 and December 7, 2007, **JUAN GILBERTO VILLALOBOS**, a/k/a "Smoke," a/k/a "Smokey," discussed distributing a quantity of cocaine. Also on or about December 7, 2007, **JUAN GILBERTO VILLALOBOS**, a/k/a "Smoke," a/k/a "Smokey," distributed a quantity of cocaine.

hh. On or about December 6, 2007, **MARIO GUARJARDO-GARCIA**, a/k/a "Speedy," "Iran Guerrero-Gomez," discussed distributing a quantity of cocaine with others both known and unknown to the Grand Jury.

ii. On or about December 8, 2007, **JUAN RUBEN VELA GARCIA**, a/k/a "Mariachi," discussed obtaining a gun with others both known and unknown to the Grand Jury.

jj. On or about December 8, 2007, **JOSE AMILCAR GARCIA BONILLA**, a/k/a "Psicopata," a/k/a "Sicario," **CARLOS ALBERTO FERRUFINO-BONILLA**, a/k/a "El Tigre," **YELSON OLIDER CASTRO-LICONA** a/k/a "El Diablo," and **JUAN RUBEN VELA GARCIA**, a/k/a "Mariachi," conspired and attempted to rob a known house of prostitution.

kk. On or about December 8, 2007, in a Greensboro, North Carolina restaurant, **ALEJANDRO ENRIQUE UMANA, a/k/a "Wizard," "Lobo,"** murdered Ruben Garcia Salinas and Manuel Garcia Salinas. **ALEJANDRO ENRIQUE UMANA, a/k/a "Wizard," "Lobo,"** later escaped to Charlotte with the help of **CESAR CASTILLO, a/k/a "Chino," JULIO CESAR ROSALES LOPEZ, a/k/a "Stiler,"** and others both known and unknown to Grand Jury.

ll. On or about December 8, 2007, at the El Vaquero club in Charlotte, **ALEJANDRO ENRIQUE UMANA, a/k/a "Wizard," "Lobo," JAIME SANDOVAL, a/k/a "Pelon,"** and **JULIO CESAR ROSALES LOPEZ, a/k/a "Stiler,"** threatened to, attempted to, and did rob a person known to the Grand Jury.

mm. On or about January 5, 2008, in Greensboro, North Carolina, **JOSE AMILCAR GARCIA BONILLA, a/k/a "Psicopata," a/k/a "Sicario," EDGAR MIGUEL GRANADOS-ALVAREZ, a/k/a "Gorilon," JULIO CESAR ROSALES LOPEZ, a/k/a "Stiler,"** and **SANTOS CANALES-REYES, a/k/a/ "Chicago "** met to discuss MS-13 gang business (activities in furtherance of the enterprise), including organizing, killing rival gang members, collecting dues, obtaining firearms, and other criminal activities.

nn. On or about January 5 and January 6, 2008, **MICHAEL STEVEN MENA, a/k/a "Cholo,"** possessed a firearm.

oo. On or about January 9, 2008, **MANUEL DE JESUS AYALA, a/k/a "Chacua,"** discussed MS-13 business (activities in furtherance of the enterprise) with a person known to the Grand Jury.

pp. On or about January 10, 2008, **EDGAR MIGUEL GRANADOS-ALVAREZ, a/k/a "Gorilon,"** discussed distributing cocaine with a person known to the Grand Jury.

qq. On or about January 11, 2008, **JOHNNY ELIAS GONZALEZ, a/k/a "Solo,"** discussed the commission of various shootings and the possession of firearms and drugs with others both known and unknown to the Grand Jury.

rr. On or about January 12, 2008, **ALEXI RICARDO RAMOS, a/k/a "Pajaro,"** possessed firearms and cocaine.

ss. On or about January 12, 2008, **JOHNNY ELIAS GONZALEZ, a/k/a "Solo," JAVIER MOLINA, a/k/a "Big Psycho,"** and others both known and unknown to the Grand Jury, threatened rival gang members and possessed firearms.

tt. On or about January 12, 2008, **EDGAR MIGUEL GRANADOS-ALVAREZ, a/k/a "Gorilon,"** discussed distributing cocaine with a person known to the Grand Jury.

uu. On or about January 13, 2008, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** discussed distributing cocaine and firearms with others both known and unknown to the Grand Jury.

vv. On or about January 14, 2008, **JUAN RUBEN VELA GARCIA, a/k/a "Mariachi,"** discussed obtaining grenades and blowing up rival gang members with others both known and unknown to the Grand Jury.

ww. On or about January 14, 2008, **JULIO CESAR ROSALES LOPEZ, a/k/a "Stiler,"** discussed organizing MS-13 cliques with others both known and unknown to the Grand Jury.

xx. On or about January 14, 2008, **MANUEL DE JESUS AYALA, a/k/a "Chacua,"** discussed MS-13 gang business (activities in furtherance of the enterprise) with a person known to the Grand Jury.

yy. On or about January 18, 2008, in Greensboro, North Carolina, **JULIO CESAR ROSALES LOPEZ, a/k/a "Stiler,"** possessed a firearm.

zz. On or about January 19, 2008, **MANUEL DE JESUS AYALA, a/k/a "Chacua,"** discussed MS-13 gang business (activities in furtherance of the enterprise) with a person known to the Grand Jury.

aaa. On or about January 22, 2008, **CARLOS ROBERTO FIGUEROA-PINEDA, a/k/a "Drogo,"** possessed marijuana and a firearm.

bbb. On or about February 3, 2008, at the Golden Palacio club in Charlotte, **CESAR YOALDO CASTILLO, a/k/a "Chino,"** shot Victim No. 2 and Victim No. 3 and shot at others both known and unknown to the Grand Jury.

ccc. On or about February 9, 2008, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** discussed possessing firearms with others both known and unknown to the Grand Jury.

ddd. On or about February 16, 2008, at the Mi Cabana club in Charlotte, **CESAR YOALDO CASTILLO, a/k/a "Chino,"** shot at and assaulted Victims No. 4, 5, and 6, whom he believed to be rival gang members.

eee. On or about February 19, 2008, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** discussed distributing cocaine with others both known and unknown to the Grand Jury. On or about February 22, 2008, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** distributed a quantity of cocaine.

fff. On or about February 29, 2008, an MS-13 meeting was held in Charlotte and attended by **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey," HEVERTH ULISES CASTELLON, a/k/a "Misterio," a/k/a "Sailor," JOSE EFRAIN AYALA-URBINA, a/k/a "Peligroso," OSCAR MANUEL MORAL-HERNANDEZ, a/k/a "Truchon," SANTOS ANIBAL CABALLERO FERNANDEZ, a/k/a "Garra," ELVIN PASTOR FERNANDEZ-GRADIS, a/k/a "Tigre," a/k/a "Flaco," a/k/a "Juan Alberto Irias," a/k/a "Freddy," CARLOS ROBERTO FIGUEROA-PINEDA, a/k/a "Drogo," JAIME SANDOVAL, a/k/a "Pelon,"** and others both known and unknown to the Grand Jury. At the meeting, members discussed MS-13 business (activities in furtherance of the enterprise).

ggg. On or about March 7, 2008, an MS-13 meeting was held in Columbia, South Carolina and attended by **HEVERTH ULISES CASTELLON, a/k/a "Misterio," a/k/a "Sailor," CARLOS ROBERTO FIGUEROA-PINEDA, a/k/a "Drogo," JAIME SANDOVAL, a/k/a "Pelon," CESAR YOALDO CASTILLO, a/k/a "Chino," JUAN GILBERTO VILLALOBOS, a/k/a "Smoke" a/k/a "Smokey," JOSE EFRAIN AYALA-URBINA, a/k/a "Peligroso,"** and others both known and unknown to the Grand Jury. At the meeting, members discussed MS-13 business (activities in furtherance of the enterprise).

hhh. On or about March 7, 2008, **SANTOS CANALES-REYES, a/k/a "Chicago,"** threatened a person known to the Grand Jury by holding a firearm to his head.

iii. From about March 18 to March 21, 2008, **HEVERTH ULISES CASTELLON, a/k/a "Misterio," a/k/a "Sailor," JUAN GILBERTO VILLALOBOS, a/k/a "Smoke" a/k/a "Smokey," CESAR YOALDO CASTILLO, a/k/a "Chino," and OSCAR MANUEL MORAL-HERNANDEZ, a/k/a "Truchon,"** conspired and attempted to commit an armed robbery of a business in Virginia.

jjj. On or about April 12, 2008, in Charlotte, **ELVIN PASTOR FERNANDEZ-GRADIS, a/k/a "Tigre," a/k/a "Flaco," a/k/a "Juan Alberto Irias," a/k/a "Freddy,"** murdered Ulises Alejandro Mayo-De La Torre. Right after the murder, **ELVIN PASTOR FERNANDEZ-GRADIS, a/k/a "Tigre," a/k/a "Flaco," a/k/a "Juan Alberto Irias," a/k/a "Freddy,"** escaped the murder scene with the assistance of **SANTOS ANIBAL CABALLERO FERNANDEZ, a/k/a "Garra."**

kkk. On or about May 1, 2008, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey," and JAIME SANDOVAL, a/k/a "Pelon,"** distributed a quantity of cocaine to a person known to the Grand Jury.

lll. On or about May 26, 2008, **JAIME SANDOVAL, a/k/a "Pelon,"** possessed a firearm.

mmm. On numerous occasions between about October 2007 and continuing until the present, from within an El Salvador prison, where he remains incarcerated, **MANUEL DE JESUS AYALA, a/k/a "Chacua,"** exercised a leadership role with respect to various MS-13 gang activities, and on multiple occasions requested that MS-13 members, within the Western District of North Carolina and elsewhere, wire him money. After these requests, MS-13 members and associates often wired him money.

nnn. From about October 2007 and continuing until the present, and on numerous occasions, members of MS-13 including **JULIO CESAR ROSALES LOPEZ, a/k/a "Stiler,"** and others both known and unknown to the Grand Jury, discussed plans to murder a person known to the Grand Jury whom they believed to be cooperating with law enforcement.

ooo. On or about May 29, 2008, **MARIO GUARJARDO-GARCIA, a/k/a "Speedy," "Iran Guerrero-Gomez,"** possessed cocaine with the intent to distribute.

ppp. On or about June 12, 2008, in Greensboro, North Carolina, **ALEJANDRO ENRIQUE UMANA, a/k/a "Wizard," "Lobo," HEVERTH ULISES CASTELLON, a/k/a "Misterio," a/k/a "Sailor," JAIME SANDOVAL, a/k/a "Pelon," JOSE EFRAIN AYALA-URBINA, a/k/a "Peligroso," and SANTOS CANALES-REYES, a/k/a "Chicago,"** and others both known and unknown to the Grand Jury, conspired to, attempted to, and did intimidate witnesses and obstruct justice, by searching out eyewitnesses to crimes and overt acts described in this Indictment for the purpose of preventing them from testifying or cooperating with law enforcement.

All in violation of Title 18, United States Code, Section 1962(d).

COUNT TWO

(Conspiracy to Distribute and Possession with Intent to Distribute Cocaine and Marijuana)

24. From at least on or about 2004 and continuing to until the present, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendants,

- (3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio"
"Sailor"
(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke"
a/k/a "Smokey"
(7) JUAN RUBEN VELA GARCIA,
a/k/a "Mariachi"
(11) NELSON HERNANDEZ-AYALA,
a/k/a "Sixteen"
(12) MARIO MELGAR-DIAZ,
a/k/a "Nino"
(14) CARLOS ROBERTO FIGUEROA-PINEDA,
a/k/a "Drogo"
(16) EDGAR MIGUEL GRANADOS-ALVAREZ,
a/k/a "Gorilon"
"Alexander Granados"
(19) JAIME SANDOVAL,
a/k/a "Pelon"
(24) MANUEL CRUZ, and
a/k/a "Silencioso"
(26) MARIO GUARJARDO-GARCIA,
a/k/a "Speedy"
"Iran Guerrero-Gomez"

did knowingly and intentionally conspire and agree with each other and others both known and unknown to the Grand Jury, to distribute and to possess with intent to distribute one or more controlled substances, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, and marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Said offense involved 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine.

Said offense involved a mixture and substance containing a detectable amount of marijuana.

All in violation of Title 21, United States Code, Sections 846, 841(b)(1)(A), and 841(b)(1)(C).

COUNT THREE

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

25. At all times relevant to this Indictment, MS-13, a criminal organization described in paragraphs 1 through 16 of Count One which paragraphs are realleged and incorporated by reference herein, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

26. MS-13, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder, robbery and extortion in violation of North Carolina law, narcotics trafficking in violation of Title 21, United States Code, Sections 841, 843 and 846, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering) and 1951 (robbery and extortion) of Title 18, United States Code.

27. On or about August 19, 2005, in Durham, North Carolina, within the Middle District of North Carolina, and elsewhere, defendant,

**(17) MICHAEL STEVEN MENA,
a/k/a "Cholo,"**

aiding and abetting others both known and unknown to the Grand Jury, for the purpose of gaining entrance to and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, did assault with a dangerous weapon, a firearm, an individual known to the Grand Jury, Victim No. 1, in violation of North Carolina law, N.C. Gen. Stat. § 14-32.

All in violation of Title 18, United States Code, Sections 1959(a)(3) and 2.

COUNT FOUR

(Use and Carrying of Firearm During and in Relation to a Crime of Violence)

28. Paragraphs 1 through 27 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

29. On or about August 19, 2005, in Durham, North Carolina, within the Middle District of North Carolina, and elsewhere, defendant,

**(17) MICHAEL STEVEN MENA,
a/k/a "Cholo,"**

during and in relation to a crime of violence, to wit, assault with a dangerous weapon in aid of racketeering activity, a violation of Title 18, United States Code, Section 1959(a)(3), charged in Count Three of this Indictment, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry one or more firearms, and in furtherance of such crime of violence, did possess one or more firearms.

In violation of Title 18, United States Code, Section 924(c).

COUNT FIVE
(Distribution of Cocaine)

30. On or about August 3, 2006, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(12) MARIO MELGAR-DIAZ,
a/k/a "Nino,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT SIX
(Distribution of Cocaine)

31. On or about September 8, 2006, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(12) MARIO MELGAR-DIAZ,
a/k/a "Nino,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT SEVEN
(Distribution of Cocaine)

32. On or about September 28, 2006, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(12) MARIO MELGAR-DIAZ,
a/k/a "Nino,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT EIGHT
(Possession of a Firearm by an Illegal Alien)

33. On or about October 29, 2006, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(23) SANTOS ANIBAL CABALLERO FERNANDEZ,
a/k/a "Garra,"

aiding and abetting others both known and unknown to the Grand Jury, then being an alien illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: a .357 revolver and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(5) and 2.

COUNT NINE
(Illegal Use of Communication Facility)

34. On or about January 22, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(12) MARIO MELGAR-DIAZ,
a/k/a "Nino,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT TEN
(Felon in Possession of a Firearm)

35. On or about March 19, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(21) JOSE EFRAIN AYALA-URBINA,
a/k/a "Peligroso"

having previously been convicted of one or more crimes punishable by imprisonment for a term exceeding one year, did knowingly possess, in and affecting commerce, one or more firearms, to wit: one .25 caliber Lorcin L25 semi-automatic pistol and ammunition.

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT ELEVEN
(Illegal Use of Communication Facility)

36. On or about June 8, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(11) NELSON HERNANDEZ-AYALA,
a/k/a "Sixteen,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT TWELVE
(Illegal Use of Communication Facility)

37. On or about July 19, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(11) NELSON HERNANDEZ-AYALA,
a/k/a "Sixteen,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Counts Two and Thirteen of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT THIRTEEN
(Distribution of Cocaine)

38. On or about July 19, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendants,

(11) NELSON HERNANDEZ-AYALA,
a/k/a "Sixteen,"
and
(26) MARIO GUARJARDO-GARCIA,
a/k/a "Speedy,"
"Iran Guerrero-Gomez,"

aiding and abetting each other and others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and 18 United States Code, Section 2.

COUNT FOURTEEN
(Possession with Intent to Distribute Cocaine)

39. On or about August 10, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(13) ALEXI RICARDO RAMOS,
a/k/a "Pajaro,"

did knowingly and intentionally possess with intent to distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of United States Code Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT FIFTEEN
(Illegal Use of Communication Facility)

40. On or about and between November 7, 2007 and continuing until November 9, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(24) MANUEL CRUZ,
a/k/a "Silencioso,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT SIXTEEN
(Illegal Use of a Communication Facility)

41. On or about and between November 28, 2007 and November 29, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two and Count Seventeen of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT SEVENTEEN
(Distribution of Cocaine)

42. On or about November 29, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT EIGHTEEN
(Alien in Possession of a Firearm and Ammunition)

43. On or about November 30, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendants,

(8) JOSE AMILCAR GARCIA-BONILLA,
a/k/a "Psicopata,"

"Sicario,"

(9) YELSON OLIDER CASTRO-LICONA,
a/k/a "Diablo," and

(10) CARLOS FERUFINO-BONILLA,
a/k/a "Tigre,"

aiding and abetting each other and others both known and unknown to the Grand Jury, then being aliens illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: an Intratec nine millimeter semi-automatic pistol and a Bauer .25 semi-automatic pistol and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(5) and 2.

COUNT NINETEEN
(Illegal Use of a Communication Facility)

44. On or about December 6, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(26) MARIO GUARJARDO-GARCIA,
a/k/a "Speedy,"
a/k/a "Iran Guerrero-Gomez,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT TWENTY
(Illegal Use of a Communication Facility)

45. On or about December 7, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Counts Two and Twenty-One of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT TWENTY-ONE
(Distribution of Cocaine)

46. On or about December 7, 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT TWENTY-TWO
(Murder in Aid of Racketeering)

47. At all times relevant to this Indictment, MS-13, a criminal organization described in paragraphs 1 through 16 of Count One which paragraphs are realleged and incorporated by reference herein, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

48. MS-13, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder, robbery and extortion in violation of North Carolina law, narcotics trafficking in violation of Title 21, United States Code, Sections 841, 843 and 846, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering) and 1951 (robbery and extortion) of Title 18, United States Code.

49. On or about December 8, 2007, in Guilford County, within the Middle District of North Carolina, and in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(2) ALEJANDRO ENRIQUE RAMIREZ UMANA,
a/k/a "Wizard,"

aided and abetted by others known and unknown to the Grand Jury, for the purpose of maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, unlawfully and knowingly murdered Ruben Garcia Salinas, in violation of North Carolina General Statute Sections 14-17.

All in violation of Title 18, United States Code, Sections 1959(a)(1) and 2.

COUNT TWENTY-THREE
**(Use and Possession of Firearm During and in Relation to
a Crime of Violence Resulting in Death)**

50. Introductory Paragraphs 1 through 16 of Count One of this Indictment are re-alleged and incorporated herein by reference.

51. On or about December 8, 2007, in Guilford County, within the Middle District of North Carolina, and in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

**(2) ALEJANDRO ENRIQUE RAMIREZ UMANA,
a/k/a "Wizard,"**

during and in relation to a crime of violence, that is: conspiracy to participate in a racketeering enterprise and murder in aid of racketeering, violations of Title 18, United States Code, Sections 1962 and 1959, which are set forth in Counts One and Twenty-Two of this Indictment and incorporated herein by reference, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry a firearm, and, in furtherance of such crime of violence, did possess said firearm, to wit: a Ruger .45 caliber semi-automatic pistol, such use and possession resulting in the unlawful killing of Ruben Garcia Salinas with malice aforethought as defined in Title 18, United States Code, Section 1111(a).

All in violation of Title 18, United States Code, Sections 924(c) and 924(j)(1).

COUNT TWENTY-FOUR
(Murder in Aid of Racketeering)

52. At all times relevant to this Indictment, MS-13, a criminal organization described in paragraphs 1 through 16 of Count One which paragraphs are realleged and incorporated by reference herein, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

53. MS-13, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder, robbery and extortion in violation of North Carolina law, narcotics trafficking in violation of Title 21, United States Code, Sections 841, 843 and 846, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering) and 1951 (robbery and extortion) of Title 18, United States Code.

54. On or about December 8, 2007, in Guilford County, within the Middle District of North Carolina, and in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(2) ALEJANDRO ENRIQUE RAMIREZ UMANA,
a/k/a "Wizard,"

aided and abetted by others known and unknown to the Grand Jury, for the purpose of maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, unlawfully and knowingly murdered Manuel Garcia Salinas, in violation of North Carolina law, N.C. Gen. Stat. § 14-17.

All in violation of Title 18, United States Code, Sections 1959(a)(1) and 2.

COUNT TWENTY-FIVE
**(Use and Possession of Firearm During and in Relation to
a Crime of Violence Resulting in Death)**

55. Introductory Paragraphs 1 through 16 of Count One of this Indictment are re-alleged and incorporated herein by reference.

56. On or about December 8, 2007, in Guilford County, within the Middle District of North Carolina, and in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

**(2) ALEJANDRO ENRIQUE RAMIREZ UMANA,
a/k/a "Wizard,"**

during and in relation to a crime of violence, that is: conspiracy to participate in a racketeering enterprise and murder in aid of racketeering, violations of Title 18, United States Code, Sections 1962 and 1959, which are set forth in Counts One and Twenty-Four of this Indictment and incorporated herein by reference, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry a firearm, and, in furtherance of such crime of violence, did possess said firearm, to wit: a Ruger .45 caliber semi-automatic handgun, such use and possession resulting in the unlawful killing of Manuel Garcia Salinas with malice aforethought as defined in Title 18, United States Code, Section 1111(a).

All in violation of Title 18, United States Code, Sections 924(c) and 924(j)(1).

COUNT TWENTY-SIX
(Accessory After the Fact to Murder)

57. Introductory Paragraphs 1 through 16 of Count One, and Counts Twenty-One through Twenty-Five of this Indictment, are re-alleged and incorporated herein by reference.

58. On or about December 8, 2007, in Guilford County, within the Middle District of North Carolina, and in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendants,

(4) JULIO CESAR ROSALES LOPEZ,
a/k/a "Stiler," and
(15) CESAR YOALDO CASTILLO,
a/k/a "Chino,"

aided and abetted by each other and others known and unknown to the Grand Jury, knowing that offenses against the United States had been committed, that is, murder in aid of racketeering, and the use and possession of a firearm in relation to a crime of violence, as alleged in Counts Twenty-One through Twenty-Five of this Indictment, did intentionally receive, relieve, comfort, and assist the offender, **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** in order to hinder and prevent his apprehension, trial, and punishment.

In violation of Title 18, United States Code, Sections 3 and 2.

COUNT TWENTY-SEVEN
(Alien in Possession of Firearm)

59. On or about December 8, 2007, in Guilford County, within the Middle District of North Carolina, and in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(2) ALEJANDRO ENRIQUE RAMIREZ UMANA,
a/k/a "Wizard,"
"Lobo"

then being an alien illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: one Ruger .45 caliber semi-automatic pistol and ammunition.

In violation of Title 18, United States Code, Section 922(g)(5).

COUNT TWENTY-EIGHT
(Hobbs Act Robbery)

60. Introductory Paragraphs 1 through 23 of Count One of this Indictment are re-alleged and incorporated herein by reference.

61. On or about December 8, 2007, in Mecklenburg County, within the Western District of North Carolina, defendants,

(2) ALEJANDRO ENRIQUE RAMIREZ UMANA,
a/k/a "Wizard,"
"Lobo,"
(4) JULIO CESAR ROSALES LOPEZ,
a/k/a "Stiler," and
(19) JAIME SANDOVAL,
a/k/a "Pelon,"

aiding and abetting each other and others both known and unknown to the Grand Jury, attempted to and did knowingly and intentionally obstruct, delay and affect commerce, as that term is defined in Title 18, United States Code, Section 1951(a)(3), by robbery, in that they did unlawfully attempt to take and did take controlled substances and the proceeds of the illegal trafficking of controlled substances from the person of an individual known to the Grand Jury, without consent, against his will, and by means of actual and threatened force, violence, and fear of immediate and future injury, and induced by the wrongful use of force, violence, and fear, including fear of economic loss.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT TWENTY-NINE
(Felon in Possession of a Firearm)

62. On or about January 12, 2008, in Mecklenburg County, within the Western District of North Carolina, defendant,

(25) JAVIER MOLINA,
a/k/a "Big Psycho,"
"Gringo,"

aiding and abetting others both known and unknown to the Grand Jury, having previously been convicted of one or more crimes punishable by imprisonment for a term exceeding one year, did knowingly possess, in and affecting commerce, one or more firearms, to wit: one .25 Raven MP25 semi-automatic pistol and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(1) and 2.

COUNT THIRTY
(Possession of Cocaine with Intent to Distribute)

63. On or about January 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(13) ALEXI RICARDO RAMOS,
a/k/a "Pajaro,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally possess with intent to distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT THIRTY-ONE

(Use and Carrying of Firearm During and in Relation to a Drug Trafficking Offense)

64. On or about January 12, 2008, in Mecklenburg County, in the Western District of North Carolina, and elsewhere, defendant,

**(13) ALEXI RICARDO RAMOS,
a/k/a/ "Pajaro,"**

during and in relation to a drug trafficking offense, to wit, possession with intent to distribute one or more controlled substances, a violation of Title 21, United States Code, Sections 846 and 841(a)(1), charged in Count Two and Count Thirty of this Indictment, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry one or more firearms, and in furtherance of such drug trafficking offense, did possess one or more firearms, that is, a .38 Smith and Wesson "38 Special" revolver and a .25 Berretta semi-automatic pistol.

In violation of Title 18, United States Code, Section 924(c).

COUNT THIRTY-TWO
(Illegal Use of a Communication Facility)

65. On or about January 14, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT THIRTY-THREE
(Possession of Marijuana with Intent to Distribute)

66. On or about January 22, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(14) CARLOS ROBERTO FIGUEROA-PINEDA,
a/k/a "Drogo,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally possess with intent to distribute a controlled substance, that is, a mixture and substance containing a detectable amount of marijuana, a Schedule I controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(D), and Title 18, United States Code, Section 2.

COUNT THIRTY-FOUR

(Use and Carrying of Firearm During and in Relation to a Drug Trafficking Offense)

67. On or about January 22, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

**(14) CARLOS ROBERTO FIGUEROA-PINEDA,
a/k/a "Drogo,"**

aiding and abetting others both known and unknown to the Grand Jury, during and in relation to a drug trafficking offense, to wit, possession with intent to distribute one or more controlled substances, a violation of Title 21, United States Code, Sections 846 and 841(a)(1), charged in Counts Two and Thirty-Three of this Indictment, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry one or more firearms, and in furtherance of such drug trafficking offense, did possess a firearm, that is, a .22 RG Industries revolver.

In violation of Title 18, United States Code, Sections 924(c) and 2.

COUNT THIRTY-FIVE

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

68. At all times relevant to this Indictment, MS-13, a criminal organization described in paragraphs 1 through 16 of Count One which paragraphs are realleged and incorporated by reference herein, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

69. MS-13, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder, robbery and extortion in violation of North Carolina law, narcotics trafficking in violation of Title 21, United States Code, Sections 841, 843 and 846, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering) and 1951 (robbery and extortion) of Title 18, United States Code.

70. On or about February 3, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

**(15) CESAR YOALDO CASTILLO,
a/k/a "Chino,"**

aiding and abetting others both known and unknown to the Grand Jury, for the purpose of gaining entrance to, and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, did unlawfully and knowingly did assault Victim No. 2 with a dangerous weapon, that being a firearm, in violation of North Carolina law, N.C. Gen. Stat. § 14-32.

All in violation of Title 18, United States Code, Sections 1959(a)(3) and 2.

COUNT THIRTY-SIX

(Use and Carrying of Firearm During and in Relation to a Crime of Violence)

71. On or about February 3, 2008, in Mecklenburg County, in the Western District of North Carolina, and elsewhere, defendant,

**(15) CESAR YOALDO CASTILLO,
a/k/a "Chino,"**

during and in relation to a crime of violence, to wit, Assault with a Dangerous Weapon in Aid of Racketeering Activity of Victim No. 2, a violation of Title 18, United States Code, Section 1959(a)(3), charged in Count Thirty-Five of this Indictment, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry one or more firearms, and in furtherance of such crime of violence, did possess one or more firearms.

In violation of Title 18, United States Code, Section 924(c).

COUNT THIRTY-SEVEN
(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

72. At all times relevant to this Indictment, MS-13, a criminal organization described in paragraphs 1 through 16 of Count One which paragraphs are realleged and incorporated by reference herein, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

73. MS-13, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder, robbery and extortion in violation of North Carolina law, narcotics trafficking in violation of Title 21, United States Code, Sections 841, 843 and 846, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering) and 1951 (robbery and extortion) of Title 18, United States Code.

74. On or about February 3, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(15) CESAR YOALDO CASTILLO,
a/k/a "Chino,"

aiding and abetting others both known and unknown to the Grand Jury, for the purpose of gaining entrance to, and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, did unlawfully and knowingly assault Victim No. 3 with a dangerous weapon, that being a firearm, in violation of North Carolina law, N.C. Gen. Stat. § 14-32.

All in violation of Title 18, United States Code, Sections 1959(a)(3) and 2.

COUNT THIRTY-EIGHT

(Use and Carrying of Firearm During and in Relation to a Crime of Violence)

75. On or about February 3, 2008, in Mecklenburg County, in the Western District of North Carolina, and elsewhere, defendant,

**(15) CESAR YOALDO CASTILLO,
a/k/a "Chino,"**

during and in relation to a crime of violence, to wit, Assault with a Dangerous Weapon in Aid of Racketeering Activity of Victim No. 3, a violation of Title 18, United States Code, Section 1959(a)(3), as charged in Count Thirty-Seven of this Indictment, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry one or more firearms, and in furtherance of such crime of violence, did possess one or more firearms.

In violation of Title 18, United States Code, Section 924(c).

COUNT THIRTY-NINE
(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

76. At all times relevant to this Indictment, MS-13, a criminal organization described in paragraphs 1 through 16 of Count One which paragraphs are realleged and incorporated by reference herein, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

77. MS-13, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder, robbery and extortion in violation of North Carolina law, narcotics trafficking in violation of Title 21, United States Code, Sections 841, 843 and 846, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering) and 1551 (robbery and extortion) of Title 18, United States Code.

78. On or about February 16, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(15) CESAR YOALDO CASTILLO,
a/k/a "Chino,"

aided and abetted by others both known and unknown to the Grand Jury, for the purpose of gaining entrance to, and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, did knowingly and unlawfully assault Victims No. 4, 5, and 6 with a dangerous weapon, that being a firearm, in violation of North Carolina law, N.C. Gen. Stat. § 14-32.

All in violation of Title 18, United States Code, Sections 1959(a)(3) and 2.

COUNT FORTY

(Use and Carrying of Firearm During and in Relation to a Crime of Violence)

79. On or about February 16, 2008, in Mecklenburg County, in the Western District of North Carolina, and elsewhere, defendant,

**(15) CESAR YOALDO CASTILLO,
a/k/a "Chino,"**

during and in relation to a crime of violence, to wit, Assault with a Dangerous Weapon in Aid of Racketeering Activity of Victims No. 4, 5, and 6, a violation of Title 18, United States Code, Section 1959(a)(3), charged in Counts Thirty-Nine of this Indictment, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry one or more firearms, and in furtherance of such crime of violence, did possess one or more firearms.

In violation of Title 18, United States Code, Section 924(c).

COUNT FORTY-ONE

(Accessory After the Fact to Assault with a Dangerous Weapon in Aid of Racketeering)

80. Introductory Paragraphs 1 through 23 of Count One of this Indictment are re-alleged and incorporated herein by reference.

81. On or about February 16, 2008, Mecklenburg County, in the Western District of North Carolina, and elsewhere, defendant,

**(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"**

aiding and abetting others both known and unknown to the Grand Jury, knowing that an offense against the United States had been committed, that being Assault with a Dangerous Weapon in Aid of Racketeering as charged in Counts Thirty-Nine and Forty, did intentionally receive, relieve, comfort, and assist the offender, **CESAR YOALDO CASTILLO, a/k/a "Chino,"** in order to hinder and prevent his apprehension, trial, and punishment.

In violation of Title 18, United States Code, Sections 3 and 2.

COUNT FORTY-TWO
(Illegal Use of A Communication Facility)

82. On or about February 19, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT FORTY-THREE
(Illegal Use of a Communication Facility)

83. On or about February 22, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(19) JAIME SANDOVAL,
a/k/a "Pelon,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT FORTY-FOUR
(Illegal Use of a Communication Facility)

84. On or about February 22, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Count Two and Count Forty-Five of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT FORTY-FIVE
(Distribution of Cocaine)

85. On or about February 22, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT FORTY-SIX
(Hobbs Act Robbery Conspiracy)

86. Introductory Paragraphs 1 through 23 of Count One of this Indictment are re-alleged and incorporated herein by reference.

87. On or about and between March 18, 2008, and continuing until March 21, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendants,

(3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio,"
"Sailor,"
(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"
(15) CESAR YOALDO CASTILLO,
a/k/a "Chino," and
(22) OSCAR MANUEL MORAL-HERNANDEZ,
a/k/a "Truchon,"

did knowingly and intentionally conspire and agree with each other and others both known and unknown to the Grand Jury to unlawfully obstruct, delay and affect commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), by robbery, in that they did travel in interstate commerce, and did unlawfully conspire and attempt to take property of a business in Virginia, from the person and in the presence of one or more persons, against their will and by means of actual and threatened force, violence, and fear of immediate and future injury.

Overt Acts

88. During the course and in furtherance of the conspiracy, the defendants, **HEVERTH ULISES CASTELLON**, a/k/a "Misterio," a/k/a "Sailor," **JUAN GILBERTO VILLALOBOS**, a/k/a "Smoke," a/k/a "Smokey," **CESAR YOALDO CASTILLO**, a/k/a "Chino," and **OSCAR**

MANUEL MORAL-HERNANDEZ, a/k/a "Truchon," engaged in the following overt acts within the Western District of North Carolina, and elsewhere:

a. On or about March 18, 2008, in Mecklenburg County, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** and **CESAR YOALDO CASTILLO, a/k/a "Chino,"** and others both known and unknown to the Grand Jury met to discuss the robbery of a store in Virginia.

b. On or about March 18, 2008, in Mecklenburg County, **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," a/k/a "Smokey,"** provided a nine millimeter semi-automatic pistol to be used during the robbery.

c. On or about March 21, 2008, **HEVERTH ULISES CASTELLON, a/k/a "Misterio," a/k/a "Sailor,"** provided a .380 caliber semi-automatic pistol to be used during the robbery.

d. On or about March 21, 2008, **HEVERTH ULISES CASTELLON, a/k/a "Misterio," a/k/a "Sailor,"** and **OSCAR MANUEL MORAL-HERNANDEZ, a/k/a "Truchon,"** attempted to travel to Virginia to assist in the robbery.

All in violation of Title 18, United States Code, Section 1951.

COUNT FORTY-SEVEN
(Attempted Hobbs Act Robbery)

89. Introductory Paragraphs 1 through 23 of Count One of this Indictment are re-alleged and incorporated herein by reference.

90. On or about and between March 18, 2008, and continuing until March 21, 2008, in Mecklenburg County, within the Western District of North Carolina and elsewhere, the defendants,

(3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio,"
"Sailor,"

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

(15) CESAR YOALDO CASTILLO,
a/k/a "Chino," and

(22) OSCAR MANUEL MORAL-HERNANDEZ,
a/k/a "Truchon,"

aiding and abetting each other and others both known and unknown to the Grand Jury, did knowingly and intentionally attempt to obstruct, delay and affect commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), by robbery, in that they did unlawfully travel in interstate commerce, and did attempt to take property of a business in Virginia, from the person and in the presence of one or more persons, against their will and by means of actual and threatened force, violence, and fear of immediate and future injury.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT FORTY-EIGHT
(Possession of Firearm During and in Furtherance of a Crime of Violence)

91. Introductory Paragraphs 1 through 23 of Count One and Counts Forty and Forty-One of this Indictment are re-alleged and incorporated herein by reference.

92. On or about and between March 18, 2008 and March 21, 2008, in Mecklenburg County, within the Western District of North Carolina and elsewhere, the defendants,

(3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio,"
"Sailor,"

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey," and

(22) OSCAR MANUEL MORAL-HERNANDEZ,
a/k/a "Truchon,"

aiding and abetting each other and others both known and unknown to the Grand Jury, during and in relation to a crime of violence, that is, the violation of Title 18, United States Code 1951 set forth in Counts Forty-Six and Forty-Seven of this Indictment, for which they may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry one or more firearms, and, in furtherance of such crime of violence, did possess said firearms, to wit: a nine millimeter semi-automatic pistol and a .380 caliber semi-automatic pistol.

All in violation of Title 18, United States Code, Sections 924(c) and 2.

COUNT FORTY-NINE
(Illegal Alien in Possession of a Firearm)

93. On or about and between March 18, 2008 and March 21, 2008, in Mecklenburg County, within the Western District of North Carolina and elsewhere, the defendant,

(22) OSCAR MANUEL MORAL-HERNANDEZ,
a/k/a "Truchon,"

aiding and abetting others both known and unknown to the Grand Jury, then being an alien illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: a nine millimeter semi-automatic pistol and a .380 caliber semi-automatic pistol, and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(5) and 2.

COUNT FIFTY
(Illegal Alien in Possession of a Firearm)

94. On or about and between March 18, 2008 and March 21, 2008, in Mecklenburg County, within the Western District of North Carolina and elsewhere, the defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey,"

aiding and abetting others both known and unknown to the Grand Jury, then being an alien illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: a nine millimeter semi-automatic pistol and a .380 caliber semi-automatic pistol, and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(5) and 2.

COUNT FIFTY-ONE
(Murder in Aid of Racketeering)

95. At all times relevant to this Indictment, MS-13, a criminal organization described in paragraphs 1 through 16 of Count One which paragraphs are realleged and incorporated by reference herein, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

96. MS-13, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder, robbery and extortion in violation of North Carolina law, narcotics trafficking in violation of Title 21, United States Code, Sections 841, 843 and 846, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering) and 1951 (robbery and extortion) of Title 18, United States Code.

97. On or about April 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(6) ELVIN PASTOR FERNANDEZ-GRADIS,
a/k/a "El Tigre,"
"Flaco,"
"Juan Alberto,"
"Freddy,"

aided and abetted by others known and unknown to the Grand Jury, for the purpose of maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, unlawfully and knowingly murdered Ulisses Alejandro Mayo-De La Torre, in violation of North Carolina law, N.C. Gen. Stat. § 14-17.

All in violation of Title 18, United States Code, Sections 1959(a)(1) and 2.

COUNT FIFTY-TWO
**(Use and Possession of Firearm During and in Relation to
a Crime of Violence Resulting in Death)**

98. Introductory Paragraphs 1 through 16 of Count One of this Indictment are re-alleged and incorporated herein by reference.

99. On or about April 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(6) ELVIN PASTOR FERNANDEZ-GRADIS,
a/k/a "El Tigre,"
"Flaco,"
"Juan Alberto,"
"Freddy,"

aiding and abetting others both known and unknown to the Grand Jury during and in relation to a crime of violence, that is: conspiracy to participate in a racketeering enterprise and murder in aid of racketeering, violations of Title 18, United States Code, Sections 1962 and 1959, which are set forth in Counts One and Fifty-One of this Indictment and incorporated herein by reference, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry a firearm, and, in furtherance of such crime of violence, did possess said firearm, such use and possession resulting in the unlawful killing of Ulisses Alejandro Mayo-De La Torre with malice aforethought as defined in Title 18, United States Code, Section 1111(a).

All in violation of Title 18, United States Code, Sections 924(c) and 924(j)(1).

COUNT FIFTY-THREE
(Accessory After the Fact to Murder)

100. Introductory Paragraphs 1 through 16 of Count One of this Indictment are re-alleged and incorporated herein by reference.

101. On or about April 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(23) SANTOS ANIBAL CABALLERO FERNANDEZ,
a/k/a "Garra,"

knowing that an offense against the United States had been committed, that being Murder in Aid of Racketeering as charged in Count Fifty-One and Use and Possession of a Firearm During and in Relation to a Crime of Violence as charged in Count Fifty-Two, did intentionally receive, relieve, comfort, and assist the offender, **ELVIN PASTOR FERNANDEZ-GRADIS, a/k/a "Flaco," a/k/a "Tigre," a/k/a "Juan Alberto Irias," a/k/a "Freddy,"** in order to hinder and prevent his apprehension, trial, and punishment.

In violation of Title 18, United States Code, Sections 3 and 1959.

COUNT FIFTY-FOUR
(Illegal Alien in Possession of a Firearm)

102. On or about April 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(6) ELVIN PASTOR FERNANDEZ-GRADIS,
a/k/a "El Tigre,"
"Flaco,"
"Juan Alberto,"
"Freddy,"

aiding and abetting others both known and unknown to the Grand Jury, then being an alien illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: a nine millimeter semi-automatic pistol and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(5) and 2.

COUNT FIFTY-FIVE
(Reentry After Deportation)

103. On or about April 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(6) ELVIN PASTOR FERNANDEZ-GRADIS,
a/k/a "El Tigre,"
"Flaco,"
"Juan Alberto,"
"Freddy,"

an alien who had previously been deported and removed to Honduras on or about March 3, 2005, and again to Honduras on or about January 12, 2006, was found in the United States, without the Attorney General of the United States or his successor, the Secretary for Homeland Security, pursuant to Title 6, United States Code, Sections 202(3), 202(4) and 557, having expressly consented to such alien's reapplying for admission to the United States.

In violation of Title 8, United States Code, Section 1326(a).

COUNT FIFTY-SIX
(Illegal Use of a Communication Facility)

104. On or about May 1, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(19) JAIME SANDOVAL,
a/k/a "Pelon,"

did knowingly and intentionally use a communication facility, that being a telephone, in committing or in causing or facilitating the commission of any act or acts constituting a felony under Title 21, United States Code, Sections 846 and 841(a)(1), that is, offenses set forth in Counts Two and Fifty-Seven of this Indictment and incorporated by reference herein.

In violation of Title 21, United States Code, Section 843(b).

COUNT FIFTY-SEVEN
(Distribution of Cocaine)

105. On or about May 1, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendants,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke,"
"Smokey," and
(19) JAIME SANDOVAL,
a/k/a "Pelon,"

aiding and abetting each other and others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT FIFTY-EIGHT
(Hobbs Act Extortion Conspiracy)

106. Introductory Paragraphs 1 through 23 of Count One of this Indictment are re-alleged and incorporated herein by reference.

107. On or about and between October 2007, and continuing until June 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendants,

- (2) **ALEJANDRO ENRIQUE RAMIREZ UMANA,**
a/k/a "Wizard,"
"Lobo,"
(3) **HEVERTH ULISES CASTELLON,**
a/k/a "Misterio,"
"Sailor,"
(4) **JULIO CESAR ROSALES LOPEZ,**
a/k/a "Stiler,"
(5) **JUAN GILBERTO VILLALOBOS,**
a/k/a "Smoke,"
"Smokey,"
(7) **JUAN RUBEN VELA GARCIA,**
a/k/a "Mariachi," and
(19) **JAIME SANDOVAL,**
a/k/a "Pelon,"

did knowingly and intentionally conspire and agree with each other and others both known and unknown to the Grand Jury to obstruct, delay, and affect commerce and attempt to obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), by extortion, that is, defendants conspired and attempted to obtain property, to wit, the proceeds of the illegal trafficking of controlled substances, with consent, induced by the wrongful use of force, violence, and fear, including fear of economic loss.

Overt Acts

108. During the course and in furtherance of the conspiracy, the defendants, **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard," "Lobo," HEVERTH ULISES CASTELLON, a/k/a "Misterio," "Sailor," JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," "Smokey," JUAN RUBEN VELA GARCIA, a/k/a "Mariachi," and JAIME SANDOVAL, a/k/a "Pelon,"** engaged in the following overt acts within the Western District of North Carolina, and elsewhere:

a. On or about October 26, 2007 and October 27, 2007, in Mecklenburg County, **JUAN RUBEN VELA GARCIA, a/k/a "Mariachi,"** and others both known and unknown to the Grand Jury met to discuss the ways to increase gang revenues by means of extorting drug dealers.

b. On or about December 8, 2007, in Mecklenburg County, **HEVERTH ULISES CASTELLON, a/k/a "Misterio," "Sailor," JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," "Smokey," JAIME SANDOVAL, a/k/a "Pelon,"** and others both known and unknown to the Grand Jury met to plan and implement a systematic tax on drug dealers selling in MS-13 controlled nightclubs.

All in violation of Title 18, United States Code, Section 1951.

COUNT FIFTY-NINE
(Distribution of Cocaine)

109. On or about May 29, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(26) MARIO GUARJARDO-GARCIA,
a/k/a "Speedy"
"Iran Guerrero-Gomez"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally distribute a controlled substance, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2,

COUNT SIXTY
(Reentry After Deportation)

110. On or about May 29, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(26) MARIO GUARJARDO-GARCIA,
a/k/a "Speedy"
"Iran Guerrero-Gomez"

an alien who had previously been deported and removed to Mexico on or about February 13, 2007, was found in the United States, without the Attorney General of the United States or his successor, the Secretary for Homeland Security, pursuant to Title 6, United States Code, Sections 202(3), 202(4) and 557, having expressly consented to such alien's reapplying for admission to the United States.

In violation of Title 8, United States Code, Section 1326(a).

COUNT SIXTY-ONE
(Conspiracy to Obstruct Justice and Tamper with Witnesses)

111. On or about and between June 12, 2008, in the Western District and Middle District of North Carolina, and elsewhere, defendants,

(2) ALEJANDRO ENRIQUE UMANA,
a/k/a "Wizard,"
"Lobo,"
(3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio,"
"Sailor,"
(19) JAIME SANDOVAL,
a/k/a "Pelon,"
(20) SANTOS CANALES-REYES,
a/k/a "Chicago," and
(21) JOSE EFRAIN AYALA-URBINA,
a/k/a "Peligroso,"

did knowingly and willfully conspire and agree with each other and with others both known and unknown to the Grand Jury, and aiding and abetting each other and others both known and unknown to the Grand Jury, to commit an offense against the United States, to wit:

- a. corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede the due administration of justice, in violation of Title 18, United States Code, Sections 1503 and 2.
- b. corruptly persuade another person, or attempt to do so, with intent to influence, delay, or prevent the testimony of any person in an official proceeding, in violation of Title 18, United States Code, Sections 1512(b)(1) and 2.

112. The primary object of the conspiracy was to intimidate witnesses to prevent them from testifying and cooperating with law enforcement in relation to Count One and Counts Twenty-Two through Twenty-Five of this Indictment..

113. In furtherance of the conspiracy and to effect the object thereof, defendants and others both known and unknown to the Grand Jury performed or caused to be performed the following acts in the Middle and Western Districts of North Carolina and elsewhere, including but not limited to:

a. On or about June 12, 2008, defendant, **ALEJANDRO ENRIQUE UMANA, a/k/a "Wizard," "Lobo,"** did communicate directly or indirectly with defendant **JAIME SANDOVAL, a/k/a "Pelon,"** to plan a scheme to prevent eyewitness testimony and procure false evidence for the defendant.

b. On or about June 12, 2008, defendant **HEVERTH ULISES CASTELLON, a/k/a "Misterio," a/k/a "Sailor,"** organized a meeting, which **JAIME SANDOVAL, a/k/a "Pelon," JOSE EFRAIN AYALA-URBINA, a/k/a "Peligroso,"** and **SANTOS CANALES-REYES, a/k/a "Chicago,"** attended, to plan a trip to Greensboro to prevent eyewitnesses to the murders charged in Counts Twenty-Two through Count Twenty-Five from cooperating with law enforcement.

c. On or about June 12, 2008, defendants, **JAIME SANDOVAL, a/k/a "Pelon," JOSE EFRAIN AYALA-URBINA, a/k/a "Peligroso,"** and **SANTOS CANALES-REYES, a/k/a "Chicago,"** and others both known and unknown to the Grand Jury, did drive to Las Jarochitas restaurant in Greensboro, North Carolina, and did attempt to locate, intimidate, and influence witnesses in relation to Count One and Counts Twenty-Two through Twenty-Five of this Indictment.

c. On our about June 12, 2008, defendants, **JAIME SANDOVAL, a/k/a "Pelon,"** and **SANTOS CANALES-REYES, a/k/a "Chicago,"** did possess firearms during and in relation to

their attempt to locate, intimidate, and influence witnesses in relation to Count One and Counts Twenty-Two through Twenty-Five of this Indictment.

All in violation of Title 18, United States Code, Sections 371 and 2.

COUNT SIXTY-TWO
(Obstruction of Justice)

114. On or about June 12, 2008, in Guilford County, in the Middle District of North Carolina, and elsewhere, defendants,

(2) ALEJANDRO ENRIQUE UMANA,
a/k/a "Wizard,"
"Lobo,"
(3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio,"
"Sailor,"
(19) JAIME SANDOVAL,
a/k/a "Pelon,"
(20) SANTOS CANALES-REYES,
a/k/a "Chicago," and
(21) JOSE EFRAIN AYALA-URBINA,
a/k/a "Peligroso,"

aiding and abetting each other and others both known and unknown to the Grand Jury, did corruptly influence, obstruct, and impede, and did endeavor to influence, obstruct, and impede, the due administration of justice.

In violation of Title 18, United States Code, Sections 1503 and 2.

COUNT SIXTY-THREE
(Tampering with Witnesses)

115. On or about June 12, 2008, in Guilford County, in the Middle District of North Carolina, and elsewhere, defendants,

(2) ALEJANDRO ENRIQUE UMANA,
a/k/a "Wizard,"
"Lobo,"
(3) HEVERTH ULISES CASTELLON,
a/k/a "Misterio,"
"Sailor,"
(19) JAIME SANDOVAL,
a/k/a "Pelon,"
(20) SANTOS CANALES-REYES,
a/k/a "Chicago," and
(21) JOSE EFRAIN AYALA-URBINA,
a/k/a "Peligroso,"

aiding and abetting each other and others both known and unknown to the Grand Jury, did knowingly and willfully use intimidation and threaten another person, or attempted to do so, with intent to influence, delay, or prevent the testimony of any person in an official proceeding.

In violation of Title 18, United States Code, Sections 1512(b)(1) and 2.

COUNT SIXTY-FOUR

(Use and Possession of a Firearm During and in Relation to a Crime of Violence)

116. On or about June 12, 2008, in Guilford County, in the Middle District of North Carolina, and elsewhere, defendants,

(19) JAIME SANDOVAL,
a/k/a "Pelon,"
(20) SANTOS CANALES-REYES,
a/k/a "Chicago," and
(21) JOSE EFRAIN AYALA-URBINA,
a/k/a "Peligroso,"

aiding and abetting each other and others both known and unknown to the Grand Jury, during and in relation to a crime of violence, to wit, Racketeering Conspiracy, a violation of Title 18, United States Code, Section 1962(d) and Witness Intimidation, a violation of Title 18, United States Code, Section 1512(b)(1), charged in Count Sixty-Three of this Indictment, for which he may be prosecuted in a court of the United States, did knowingly and unlawfully use and carry one or more firearms, and in furtherance of such crime of violence, did possess one or more firearms, to wit: one .380 caliber Beretta semi-automatic pistol, one .38 caliber H&R revolver, and ammunition.

In violation of Title 18, United States Code, Section 924(c).

COUNT SIXTY-FIVE
(Felon in Possession of a Firearm)

117. On or about June 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and in Guilford County, within the Middle District of North Carolina, and elsewhere, defendant,

(19) JAIME SANDOVAL,
a/k/a "Pelon,"

aiding and abetting others both known and unknown to the Grand Jury, having previously been convicted of one or more crimes punishable by imprisonment for a term exceeding one year, did knowingly possess, in and affecting commerce, one or more firearms, to wit: one .380 caliber Beretta semi-automatic pistol, and ammunition.

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT SIXTY-SIX
(Illegal Alien in Possession of a Firearm)

118. On or about June 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and in Guilford County, within the Middle District of North Carolina, and elsewhere, defendant,

(19) JAIME SANDOVAL,
a/k/a "Pelon,"

aiding and abetting others both known and unknown to the Grand Jury, then being an alien illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: a .380 caliber Beretta semi-automatic pistol, and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(5) and 2.

COUNT SIXTY-SEVEN
(Re-entry After Deportation)

119. On or about June 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and in Guilford County, within the Middle District of North Carolina, and elsewhere, defendant,

(19) JAIME SANDOVAL,
a/k/a "Pelon,"

an alien who had previously been deported and removed on or about March 29, 2008, was found in the United States, without the Attorney General of the United States or his successor, the Secretary for Homeland Security, pursuant to Title 6, United States Code, Sections 202(3), 202(4) and 557, having expressly consented to such alien's reapplying for admission to the United States.

In violation of Title 8, United States Code, Section 1326(a) and (b).

COUNT SIXTY-EIGHT
(Illegal Alien in Possession of a Firearm)

120. On or about June 12, 2008, in Mecklenburg County, within the Western District of North Carolina, and in Guilford County, within the Middle District of North Carolina, and elsewhere, defendant,

(20) SANTOS CANALES-REYES,
a/k/a "Chicago,"

aiding and abetting others both known and unknown to the Grand Jury, then being an alien illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: a .38 caliber H&R revolver, and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(5) and 2.

COUNT SIXTY-NINE
(Illegal Alien in Possession of a Firearm)

121. On or about June 24, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(5) JUAN GILBERTO VILLALOBOS,
a/k/a "Smoke"
"Smokey"

aiding and abetting others both known and unknown to the Grand Jury, then being an alien illegally and unlawfully in the United States, did knowingly possess, in and affecting commerce, one or more firearms, to wit: a Remington .22 rifle and ammunition.

In violation of Title 18, United States Code, Sections 922(g)(5) and 2.

COUNT SEVENTY
(Possession of Marijuana with Intent to Distribute)

122. On or about June 24, 2008, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendant,

(14) CARLOS ROBERTO FIGUEROA-PINEDA,
a/k/a "Drogo,"

aiding and abetting others both known and unknown to the Grand Jury, did knowingly and intentionally possess with intent to distribute a controlled substance, that is, a mixture and substance containing a detectable amount of marijuana, a Schedule I controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(D), and Title 18, United States Code, Section 2.

NOTICE OF SPECIAL SENTENCING FACTORS

COUNT ONE:

Number One: Murder of Yonnie Alexander Morales-Maradiago

On or about June 6, 2005, in Charlotte, North Carolina (18) **JONNY ELIAS GONZALEZ**, a/k/a “Solo,” and others known and unknown to the Grand Jury, murdered Yonni Alexander Morales-Maradiago in the perpetration of a robbery in violation of North Carolina Gen Stat. § 14-17.

Number Two: Murder of Ruben Garcia Salinas

On or about December 8, 2007, in Greensboro, North Carolina, (2) **ALEJANDRO ENRIQUE UMANA**, a/k/a “Wizard,” “Lobo,” willfully, deliberately and with premeditation murdered Ruben Garcia Salinas, in violation of North Carolina Gen. Stat. § 14-17.

Number Three: Murder of Manuel Garcia Salinas

On or about December 8, 2007, in Greensboro , North Carolina, (2) **ALEJANDRO ENRIQUE UMANA**, a/k/a “Wizard,” “Lobo,” willfully, deliberately and with premeditation murdered Manuel Garcia Salinas, in violation of North Carolina Gen. Stat. § 14-17.

Number Four: Murder of Ulisses Alejandro Mayo

On or about April 12, 2008 in Charlotte, North Carolina (6) **ELVIN PASTOR FERNANDEZ-GRADIS**, a/k/a “Tigre,” “Flaco,” “Juan Alberto Irias,” “Freddy,” willfully, deliberately and with premeditation murdered Ulisses Alejandro Mayo De La Torre, in violation of North Carolina Gen. Stat. § 14-17.

Number Five: Conspiracy to Distribute and Possession with Intent to Distribute Cocaine and Marijuana

From at least on or about 2004 and continuing to until the present, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, defendants, (3) **HEVERTH ULISES CASTELLON, a/k/a "Misterio," "Sailor,"** (5) **JUAN GILBERTO VILLALOBOS, a/k/a "Smoke," "Smokey,"** (7) **JUAN RUBEN VELA GARCIA, a/k/a "Mariachi,"** (11) **NELSON HERNANDEZ-AYALA, a/k/a "Sixteen,"** (12) **MARIO MELGAR-DIAZ, a/k/a "Nino,"** (14) **CARLOS ROBERTO FIGUEROA-PINEDA, a/k/a "Drogo,"** (16) **EDGAR MIGUEL GRANADOS-ALVAREZ, a/k/a "Gorilon,"** (19) **JAIME SANDOVAL, a/k/a "Pelon,"** (24) **MANUEL CRUZ, a/k/a "Silencioso,"** and (26) **MARIO GUARJARDO-GARCIA, a/k/a "Speedy," "Iran Guerrero-Gomez,"** did knowingly and intentionally conspire and agree with each other and others both known and unknown to the Grand Jury, to distribute and to possess with intent to distribute one or more controlled substances, that is, a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, and marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Said offense involved 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine.

Said offense involved a mixture and substance containing a detectable amount of marijuana.

All in violation of Title 21, United States Code, Sections 846, 841(b)(1)(A), and 841(b)(1)(C).

COUNTS TWENTY-TWO AND TWENTY-THREE:

Number One: Murder of Ruben Garcia Salinas

- a. At the time of this offense, **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** was over the age of eighteen;
- b. In the course of this violation, **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** intentionally killed Ruben Garcia Salinas; intentionally caused serious bodily injury that resulted in the victim's death; intentionally participated in an act contemplating that the life of a person would be taken and the victim died as a result; and, intentionally and specifically engaged in an act of violence knowing that the act created a grave risk of death to persons other than one of the participants in the offense such that participation in the act constituted a reckless disregard for human life, and the victim died as a direct result of the act;
- c. **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** in the commission of the offense knowingly created a grave risk of death to one or more persons in addition to the victim of the offense;
- d. **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** intentionally killed and attempted to kill more than one person in a single criminal episode.

All in violation of North Carolina General Statute Sections 14-17, Title 18, United States Code, Sections 924(c) and (j), 1959(a)(1) and 2.

COUNTS TWENTY-FOUR AND TWENTY-FIVE:

Number One: Murder of Manuel Garcia Salinas

- a. At the time of this offense, **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** was over the age of eighteen;

b. In the course of this violation, **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** intentionally killed Manuel Garcia Salinas; intentionally caused serious bodily injury that resulted in the victim's death; intentionally participated in an act contemplating that the life of a person would be taken and the victim died as a result; and, intentionally and specifically engaged in an act of violence knowing that the act created a grave risk of death to persons other than one of the participants in the offense such that participation in the act constituted a reckless disregard for human life, and the victim died as a direct result of the act;

c. **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** in the commission of the offense knowingly created a grave risk of death to one or more persons in addition to the victim of the offense;

d. **ALEJANDRO ENRIQUE RAMIREZ UMANA, a/k/a "Wizard,"** intentionally killed and attempted to kill more than one person in a single criminal episode.

All in violation of North Carolina General Statute Sections 14-17, Title 18, United States Code, Sections 924(c) and (j), 1959(a)(1) and 2.

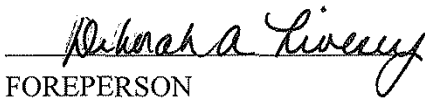
NOTICE OF FORFEITURE

Notice is hereby given of the provisions of 18 U.S.C. §924(d) and the statutes incorporated or referred to therein. The firearms and ammunition listed below are subject to forfeiture in accordance with §924(d) because they were involved in or used or intended to be used in the violations alleged in this Bill of Indictment:


1. One .357 Revolver and ammunition (Count Eight)
2. One .25 Lorcin L25 Semi-automatic Pistol and ammunition (Count Ten)
3. One Intratec nine millimeter semi-automatic pistol and ammunition (Count Eighteen)
4. One .25 semi-automatic pistol and ammunition (Count Eighteen)
5. One .45 caliber semi-automatic pistol and ammunition (Count Twenty-Seven)
6. One .25 Raven MP25 semi-automatic pistol and ammunition (Count Twenty-Nine)
7. One .38 Smith and Wesson semi-automatic pistol and ammunition (Count Thirty-One)
8. One .25 caliber Berretta semi-automatic pistol and ammunition (Count Thirty-One)
9. One .22 caliber RG Industries revolver and ammunition (Count Thirty-Four)
10. One nine millimeter semi-automatic pistol and ammunition (Count Forty-Eight, Forty-Nine)
11. One .380 caliber semi-automatic pistol and ammunition (Count Forty-Eight, Forty-Nine)

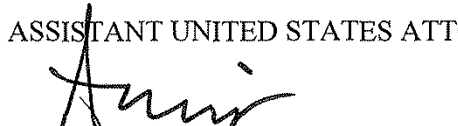
12. One .380 Berretta semi-automatic pistol and ammunition (Count Sixty-Four, Sixty-Five, Sixty-Six)
13. One .38 caliber H&R revolver and ammunition (Count Sixty-Four, Sixty-Eight)
14. One Remington .22 rifle and ammunition (Count Sixty-Nine)
15. One Freedom Arms .22 handgun and ammunition (Overt Act "g")
16. One Beretta nine millimeter handgun and ammunition (Overt Act "III")
17. One Ruger nine millimeter handgun and ammunition (Overt Act "I")
18. One SKS 7.62x39 caliber assault rifle and ammunition (Overt Act "yy")
19. One Rossi .38 Special revolver and ammunition (Count Twenty-Nine)

A TRUE BILL:


FOREPERSON

EDWARD R. RYAN
ACTING UNITED STATES ATTORNEY


KEVIN ZOLOT
ASSISTANT UNITED STATES ATTORNEY


ADAM MORRIS
ASSISTANT UNITED STATES ATTORNEY