

Appendix A

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-12214

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAURICIO GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cr-80087-DMM-1

Before WILSON, LUCK, and ANDERSON, Circuit Judges.

PER CURIAM:

Mauricio Gonzalez, proceeding *pro se*, appeals the district court's denial of his *pro se* motions for a new judgment and/or trial pursuant to Fed. R. Crim P. 33 and for judicial notice. In response, the government moves for summary affirmance arguing that the district court properly denied Gonzalez's motions pursuant to the law of the case doctrine.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where . . . the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1161-62 (5th Cir. 1969).

We review the district court's disposition of a motion for new trial for an abuse of discretion. *United States v. Martinez*, 763 F.2d 1297, 1312 (11th Cir. 1985). We also analyze the district court's decision to take judicial notice of certain facts under an abuse of discretion standard. *See Lodge v. Kondaur Capital Corp.*, 750 F.3d 1263, 1273 (11th Cir. 2014).

A motion for new trial generally must be filed within 14 days after the verdict is returned. Fed. R. Crim. P. 33(b)(2). An exception exists, however, for motions based on newly discovered evidence, which may be filed within three years of the return of the verdict.

Fed. R. Crim. P. 33(b)(1). To merit a new trial based on newly discovered evidence, the defendant must show that: (1) the evidence was discovered following trial, (2) the defendant exercised due care to discover the evidence, (3) the evidence is not merely cumulative or impeaching, (4) the evidence is material, and (5) the evidence is of such nature that a new trial would probably produce a different result. *United States v. Lee*, 68 F.3d 1267, 1273 (11th Cir. 1995). “The failure to satisfy any one of these elements is fatal to a motion for new trial.” *Id.* Generally, the district court should conduct an evidentiary hearing before deciding the motion. *United States v. Cul-liver*, 17 F.3d 349, 350-51 (11th Cir. 1994).

A court may take judicial notice of an adjudicative fact if it is undisputed and either (1) generally known in the court’s territorial jurisdiction or (2) can be readily and accurately determined from sources that cannot reasonably be questioned. Fed. R. Evid. 201(b). A court must take judicial notice if a party requests it and supplies the court with the necessary information. *Id.* 201(c).

The law-of-the-case doctrine provides that an issue decided at one stage of a case is binding at later stages of the case. *United States v. Escobar-Urrego*, 110 F.3d 1556, 1560 (11th Cir. 1997). This rule encompasses both findings of fact and conclusions of law made by the appellate court. *United States v. Anderson*, 772 F.3d 662, 668 (11th Cir. 2014). There are limited exceptions to the law-of-the-case doctrine: where there is new evidence, an intervening change in controlling law dictates a different result, or the appellate

decision, if implemented, would cause manifest injustice because it is clearly erroneous. *Id.* at 668–69.

Here, we summarily affirm the denial of Gonzalez’s *pro se* motions for a new judgment and/or trial and for judicial notice. First, it is clear as a matter of law, that the court did not abuse its discretion when it denied Gonzalez’s motion for a new judgment and/or trial. The court did not abuse its discretion when it found that Gonzalez’s motion was untimely because while Gonzalez was found guilty on July 27, 2021, and Gonzalez filed the motion for a new trial at issue in this appeal on June 26, 2024, Gonzalez did not provide any newly discovered evidence within his motion, but rather only argued that there was newly discovered evidence to show that the government misread Fla. Stat. § 794.05 and 18 U.S.C. § 2423(a). Therefore, because he did not point to any newly discovered evidence, the three-year exception would not apply and thus his motion was untimely as it was filed over 14 days after he was found guilty.

Second, the court did not abuse its discretion when it denied Gonzalez’s motion for judicial notice because it lacked jurisdiction to take judicial notice because there were no pending proceedings in which it needed to adjudicate facts as it had already denied Gonzalez’s motion for a new trial.

Further, the law of the case doctrine precludes Gonzalez’s arguments within both motions because a panel of this Court in his direct criminal appeal addressed and rejected the same issues Gonzalez puts forth in his motions and brief on appeal. *United*

24-12214

Opinion of the Court

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States v. Gonzalez, No. 21-13950 at 3-5, 16-17 (11th Cir. May 11, 2023), *cert. denied*, 144 S. Ct. 498 (Dec. 11, 2023).

AFFIRMED.

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

November 26, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 24-12214-CC
Case Style: USA v. Mauricio Gonzalez
District Court Docket No: 9:21-cr-80087-DMM-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12214

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAURICIO GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cr-80087-DMM-1

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR
REHEARING EN BANC

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Order of the Court

24-12214

Before WILSON, LUCK, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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September 30, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 24-12214-CC
Case Style: USA v. Mauricio Gonzalez
District Court Docket No: 9:21-cr-80087-DMM-1

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received in the clerk's office within the time specified in the rules. **A petition for rehearing must include a Certificate of Interested Persons and a copy of the opinion sought to be reheard. See** 11th Cir. R. 35-5(k) and 40-1.

Costs

No costs are taxed.

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or

cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

Appendix C

AFFIDAVIT OF ALEXUS SMITH

**State of Florida
County of Broward**

**United States District Court
For The Southern District of Florida
(West Palm Beach)
Case No. 9:21-cr-80087-DMM-1**

**MAURICIO GONZALEZ,
PETITIONER
v.
UNITED STATES OF AMERICA,
RESPONDENT**

DECLARATION OF ALEXUS SMITH

I, Alexus Smith, being duly sworn, hereby depose and state as follows:

I. Introduction and Purpose

1. I am providing this affidavit out of my own free will, even though it brings up painful memories and deep fears. I swear under penalty of perjury that everything in this document is true to the best of my knowledge and recollection.

2. I am here to share my truth regarding my relationship with Mauricio Gonzalez and the tremendous toll the government's actions have taken on my life, my spirit, and my well-being. It pains me to put all of this into words, especially with the constant fear that doing so could provoke the government to once again intrude in my life and continue their efforts to keep me from the person I love. I can only hope that telling my story will help bring an end to this nightmare.

II. My Relationship with Mauricio Gonzalez

3. Mauricio and I met in the summer of 2020, and from the very beginning, it was more than just a relationship; it was a connection that felt genuine, natural, and deeply loving. Over time, our bond grew stronger, and through everything, we have continued to stand by each other. I am now 21, and my love and commitment to him have only deepened.

4. The only times we have been apart were forced on us by the government. Even after I reached the age of majority, they stormed into our home without warning, separating me from Mauricio. They tore him away from me in a way that felt senseless and cruel, like they were determined to show their power no matter how much it would hurt me. I was content, safe, and

loved in that home, but in an instant, they shattered that peace. It was as if my whole world had been turned upside down. Since that day, my spirit has been broken in ways I cannot fully express. The pain, the loss, the constant ache—it has been almost too much to bear.

5. Our plans to build a future together, to marry and start a family, remain strong and unwavering despite everything we've been through. I love Mauricio with all my heart, and I have always wanted to spend my life with him. Our dreams of a life together, of marriage and children, have only become more important to me as I fight through this. No amount of interference can make me stop loving him or wanting a life together.

6. Mauricio has always treated me with respect, with kindness, and with a deep love that has kept me strong. When I was 17, he respected my choices and supported me as I made my own decisions. He never pressured me, never hurt me. The way the government has distorted our love feels like a betrayal of something pure and good. Their actions are destroying the very thing that gives me hope.

7. I would never willingly participate in anything that went against my own happiness and relationship. I have never once felt like a victim in my relationship with Mauricio. He is my partner, and we have a bond that means everything to me. My greatest wish is to be able to marry him, build a family, and be left in peace to live our lives as we choose.

III. The Government's Pressure and Manipulation

8. I was initially misled by government agents who made me believe this trial was all about some alleged murder-for-hire plot against my life—something I later realized had nothing to do with the reality of my relationship with Mauricio or the trial.

9. The government agents threatened that if I refused to testify against him, they would charge me with the sex crimes committed by those who exploited me, deport me, and destroy any hope of staying in the United States. Instead of protecting me from my abusers—who remain uncharged and free after over four years—they used intimidation and victim-shaming to force me into submission, trying to imprison Mauricio, the only person who helped me through those dark times. I was shocked and dismayed by their tactics, which seemed designed to diminish and manipulate me rather than offer the support I deserved.

10. The weight of it all, the constant pressure and threats, eventually led me to attempt suicide. I felt like I had no escape from the nightmare they were creating for me. Afterward, they placed me under a Baker Act hold, which only made everything feel darker. I felt trapped and terrified, as though my only choice was to give them what they wanted or be confined forever.

11. Throughout this process, agents fed me lies about Mauricio, saying he had been involved with "numerous young women" and portraying him as someone I could not even recognize. They were determined to turn me against the person I love, despite all my experiences showing the complete opposite. The only way to get them to stop was to tell them what they wanted to

hear. Their actions made it clear that if I went along with their story, the pressure would stop, and I would finally be left alone. I carried this fear and their words with me into the trial, feeling I had no other choice but to go along with their narrative, even when it tore me apart inside.

12. The trauma inflicted by the government went far beyond the fear of deportation. The entire process—the false accusations against Mauricio, the pain of seeing him imprisoned, the unrelenting pressure to support their narrative, and the manipulation of my genuine fears—left me in a state of mental and emotional shutdown. This trauma impacted my ability to think clearly, making it impossible for me to recount events truthfully. I felt forced to say what they wanted just to escape the ongoing distress they were causing me, and this led to a testimony that did not reflect my true experiences with Mauricio.

13. During my trial testimony, I reached a breaking point and requested a break. When I returned, I was asked whether anyone had coached me during the recess. The truth is, I didn't just go to the restroom—I experienced a complete emotional breakdown from the pressure of deciding whether to testify truthfully or continue supporting the government's narrative. During the break, my advocate encouraged me to keep going, reassuring me that the testimony was "almost over." While she reminded me we couldn't discuss the case, she asked who among Mauricio's family members was present in the courtroom. After using the restroom, I was taken to a smaller room, where the overwhelming stress and constant pressure from the sheriff's department further destabilized me. I felt emotionally disconnected and compelled to adhere to the government's narrative, fearing the consequences of arrest or deportation to the Bahamas. I have not shared what occurred outside the courtroom until now. I am still undergoing therapy to recover from the psychological toll of these events and to fully process what happened. The government's leading questions during the trial forced me to affirm their version of events, leaving me unable to testify freely or truthfully.

IV. My Statements About Devices, Communications, and Intentions

14. Early in the investigation process, I confirmed to detectives that the iPhone 7 was my phone with a Bahamian number (242). I explained to them that I had returned the iPhone XR with a Florida number (561) to its original owner after I confirmed communications from that device were being remotely altered or manipulated.

15. In those same communications, I made it very clear that I did not want to pursue charges against Mauricio, as I wanted our relationship to continue. I also explained that Mauricio never asked me for explicit photos or videos, and when I disclosed my true age, we both agreed to abstain from intimacy in Florida, where it was illegal.

V. False Accusations About Explicit Material

16. To set the record straight: Mauricio has never asked me for any sexually explicit pornographic material. Any suggestion that he did is completely false.

17. During the trial, the government's attorney told me I had no choice at trial, the government was taking over. The rephrased questions at trial made it sound like Mauricio had requested explicit pornographic or nude photos or videos, after I had just told defense that Mauricio did not. I felt cornered into going along with the Government's story just to avoid further pain and conflict.

18. I want to be absolutely clear: any testimony implying that Mauricio asked me for explicit pornographic or nude material is simply not true.

VI. WhatsApp Chats, Devices, and the Alleged Video

19. I have never personally confirmed the completeness or accuracy of the WhatsApp chat records, nor did I testify that the video on September 30th, as the government mentioned ever reached Mauricio. I did not get a receipt notification, because I never completed uploading due to poor Internet connection in the Bahamas.

20. I never discussed, confirmed, or testified that Mauricio received the video in question. It couldn't be successfully sent to his phone because it was never completely uploaded. We never spoke about it, and there was absolutely no reason for him to expect or know what the video's contents were.

21. Additionally, I clarified from the beginning in police interviews that my phone was an iPhone 7, not an iPhone XR as the government stated in court.

22. The device presented in court as containing WhatsApp chats was not the one I used to communicate with Mauricio. I believe this misunderstanding has caused significant errors in interpreting our relationship, as it includes incomplete chat logs. My iPhone 7, which the government also has, indicates that the video in question was never successfully uploaded and, therefore, could not have reached Mauricio. I was never specifically questioned about the video or its delivery; had I been, I would have truthfully answered as I have in this affidavit.

VII. The Reality of Our Intimacy

23. I am aware that in the United States, the age of consent varies from state to state. Specifically, I knew that the age of consent in Florida is 18, but other states and federally it is 16, me and Mauricio discussed this in detail.

24. I affirm that our sexual discussions were never intended to continue illegal sexual activity in Florida.

25. If I had been asked more specific or differently phrased questions by the prosecutor, I would have explained that these conversations explicitly referred to sexual activity we would have in other parts of the world, such as the Bahamas, Costa Rica, Puerto Rico, or even states like Georgia and Alabama, where we would not risk breaking Florida law.

26. I would have clarified that our discussions were meant to avoid any violations of Florida law and that I was fully conscious of the risks associated with engaging in such activity within Florida.

27. On October 16, 2020, after arriving in Miami, Mauricio and I spent time together at a hotel. We started an intimate moment, but when things escalated, Mauricio immediately asked me to stop, and we went no further. There was no sexual activity, as we had both committed to waiting to avoid any legal issues. This respect and restraint continued over the following days—Friday, Saturday, Sunday, and Monday, the night he was arrested for a DUI.

28. Mauricio's actions only reinforced what I already knew—that he respected me, my boundaries, and our relationship.

VIII. My Heartfelt Plea for Mauricio's Release

29. I offer my full support for Mauricio's immediate release. I would never support a conviction based on my relationship with him, which has always been filled with mutual respect and love.

30. I would like to clarify that everything I am stating in this affidavit is consistent with what I originally explained to detectives during their investigation. However, I feel I was misled at trial to answer their questions in a way that aligned with their narrative, as they framed questions to fit a specific portrayal. This has led to a twisted and misrepresented view of our relationship, distorting the true nature of our bond. My hope in providing this affidavit is to present an accurate account, so that we can be left to live our lives together in peace.

IX. Conclusion

31. I am providing this because I cannot bear to see our relationship, and the person I love, treated this way. I miss Mauricio terribly, and the separation and fear have left a deep emptiness in my heart. The pain of this loss has led me to seek ongoing therapy—something I never needed before the government forced its way into my life and tore him away from me.

32. Mauricio has never hurt me, pressured me, or treated me with anything but kindness and respect. I am not a victim in any way, shape, or form. I am pleading for his immediate release so that we can finally build the life we dreamed of: a life filled with love, marriage, and a family.

33. If allowed, we would look back on this as a testament to our strength and resilience, but only if the government finally stops interfering in our lives.

34. I am making this statement freely and from the depths of my heart, and I would willingly testify to those facts if needed.

X. Delay in Submitting Affidavit Due to Government's Refusal to Provide Mauricio's Location

35. I would like to state that this affidavit, or the information contained herein, could not have been provided to Mauricio earlier because the government denied my repeated requests for information regarding his whereabouts. This refusal prevented me from being in contact with him, and it delayed my ability to provide him the necessary information to submit this affidavit. I have done everything within my power to bring these details forward as soon as possible, but without Mauricio's location, it was not feasible to submit this sooner.

Alexus Smith

12-03-24

(Signature).

(Date)

Alexus Smith

28 U.S. Code § 1746 - Declarations under penalty of perjury

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.

(date)

Alexus Smith

(Signature)

Notary Acknowledgment

Subscribed and sworn to before me on this 3 day of December, 2024, by Alexus Smith

(date)

(month)

GREGORY T. TESS
(Notary Signature)

(Notary Seal)



GREGORY TESS
Commission #14170683
Expires August 05, 2026

GREGORY TESS
(Notary Printed Name)

HH28C982 Aug 05, 2026
(Notary Commission Number and Expiration Date)

Appendix B