

No. _____

In the Supreme Court of the United States

LEOPOLDO VILLAREAL,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT,

APPENDIX TO PETITION FOR CERTIORARI

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United States Court of Appeals for the Fifth Circuit

No. 24-10074
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 25, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LEOPOLDO VILLAREAL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:23-CR-75-1

Before BARKSDALE, STEWART, and RAMIREZ, *Circuit Judges.*

PER CURIAM:*

Leopoldo Villareal challenges his 180 months' sentence (the statutory maximum), imposed following his guilty-plea conviction for possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). He contests the district court's application of a cross-reference contained in Sentencing Guideline § 2K2.1 (Guideline applicable to felon in possession of

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 24-10074

firearm) to the attempted-murder Guideline under § 2A2.1 in calculating his base-level offense, and he further contends that the claimed Guidelines error was not harmless.

Although post-*Booker*, the Guidelines are advisory only, the district court must avoid significant procedural error, such as improperly calculating the Guidelines sentencing range. *Gall v. United States*, 552 U.S. 38, 46, 51 (2007). If no such procedural error exists, a properly preserved objection to an ultimate sentence is reviewed for substantive reasonableness under an abuse-of-discretion standard. *Id.* at 51; *United States v. Delgado-Martinez*, 564 F.3d 750, 751–53 (5th Cir. 2009). In that respect, for issues preserved in district court, its application of the Guidelines is reviewed *de novo*; its factual findings only for clear error. *E.g.*, *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008).

In contesting the court’s application of the attempted-murder Guideline under § 2A2.1, Villareal asserts that he lacked the requisite specific intent. The Government contends that, because § 2A2.1 does not require a specific intent to kill, the court’s application was proper. Although our court has not addressed this particular question, we need not do so here because any claimed error was harmless. *E.g.*, *United States v. Rebolloza*, 16 F.4th 480, 484–85 (5th Cir. 2021).

Assuming this issue was preserved in district court, claims of procedural error, like the one Villareal raises regarding the calculation of his Guidelines range, are also subject to harmless-error review. *E.g.*, *United States v. Reyna-Aragon*, 992 F.3d 381, 386 (5th Cir. 2021). Federal Rule of Criminal Procedure 52(a) provides that any error “that does not affect substantial rights must be disregarded”. “Accordingly, a procedural error during sentencing is harmless if the error did not affect the sentence imposed.” *Rebolloza*, 16 F.4th at 484 (citations omitted).

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The district court stated it would have imposed the same sentence regardless of any Guidelines error in the light of the 18 U.S.C. § 3553(a) sentencing factors, with particular emphasis on the need to protect the public from Villareal's further crimes. The court explained that the statutory-maximum sentence was warranted under § 3553(a) because it found Villareal to be, *inter alia*, "incredibly dangerous". *E.g., Reyna-Aragon*, 992 F.3d at 388 (5th Cir. 2021) (district court's explicit statement that it would have imposed same sentence regardless of any Guidelines-calculation error is sufficient to show error was harmless). The court's unambiguous statements at sentencing establish that the sentence was anchored to the specific facts of the instant case, and that the court had a particular sentence in mind regardless of the advisory Guidelines range. *E.g., Rebulloza*, 16 F.4th at 484-85.

For the first time on appeal, Villareal also briefly challenges the constitutionality of § 922(g)(1). As he concedes, his challenges do not satisfy the plain-error standard of review. *E.g., United States v. Jones*, 88 F.4th 571, 572-74 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024). In any event, he raises the issues to preserve them for further review.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

SENTENCING HEARING
BEFORE THE HONORABLE JAMES WESLEY HENDRIX,
UNITED STATES DISTRICT JUDGE

JANUARY 18, 2024
LUBBOCK, TEXAS

A P P E A R A N C E S

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY; TRANSCRIPT
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

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24-10074.86

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1 P R O C E E D I N G S

2 THE COURT: The Court calls the next case on the
3 docket, United States vs. Leopoldo Villareal, 5:23-CR-075-1.

4 Who is here on behalf of the defendant?

5 MR. IVERSON: Your Honor, Wade Iverson present and
6 ready with Mr. Villareal.

7 THE COURT: Thank you, Mr. Iverson.

8 For the United States?

9 MR. McLEOD: Good morning, Your Honor. Matt McLeod
10 on behalf of the United States. Ready to proceed.

11 THE COURT: Thank you, Mr. McLeod.

12 Mr. Villareal, good morning, sir.

13 THE DEFENDANT: Good morning, sir.

14 THE COURT: Will you please tell me your full name.

15 THE DEFENDANT: Leopoldo Villareal.

16 THE COURT: Let's talk about your case, sir, and
17 how we got here.

18 You previously appeared before Magistrate Judge
19 Bryant back in mid-September. You pled guilty to Count 1 of
20 the indictment charging you with felon in possession of a
21 firearm.

22 Judge Bryant found that your guilty plea was
23 knowing and voluntary and supported by a sufficient factual
24 basis, so he recommended that I accept your plea, and I did.
25 On October 5, I entered an order accepting your plea and

1 adjudging you guilty of the crime alleged against you.

2 Now, sir, I know it's the first time you and I are
3 seeing each other during this process, but I want you to know
4 that I have reviewed all of these materials and I am ready to
5 proceed today. Okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Iverson, have you had an
8 opportunity to read the presentence report and its addendum and
9 discuss those documents with your client?

10 MR. IVERSON: Yes, Your Honor.

11 THE COURT: Mr. Villareal, have you had an
12 opportunity to read the presentence report and its addendum and
13 discuss those with your attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand that we're here so I can
16 decide what sentence to impose?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Okay, Mr. Iverson. I know
19 you have multiple objections to the presentence report. I
20 have, of course, read and considered your objections, the
21 government's response, and the PSR addendum, but I'd be glad to
22 hear any additional evidence or argument you have today.

23 MR. IVERSON: Thank you, Your Honor.

24 As to the first objection, the attempted murder
25 enhancement's base offense level, just to summarize this idea

1 of the statements, firing at the deputy versus actually aiming
2 the gun at the vehicle, I would like to highlight the facts.

3 In both the moment that it's happening-- And in my
4 first motion, I mistakenly called the body cam the dash cam.
5 But in the body cam, it's clear that he's talking about an arm
6 out the window. They are firing out the window, is how he
7 describes it in the moment. And I think that is a clear
8 indication--and Mr. Villareal has confirmed that with me--he
9 was pointing at the ground in the field. Yes, his intent was
10 that the officer would see it, that the officer would be
11 scared, that the officer would back off.

12 We are not objecting to the six-level enhancement
13 of creating substantial risk of bodily injury. Obviously doing
14 that while the driver is going 130 miles an hour and firing out
15 the window to scare off a deputy, we agree that six-level
16 enhancement for that risk should apply. So we're not trying to
17 skirt responsibility. But, also, there is a difference between
18 that--firing out the window into the field--and leaning out the
19 window to point back and firing at the actual vehicle. And for
20 attempted murder, we believe that's the conduct that would have
21 to have occurred here.

22 That's also confirmed by the officer stating he
23 sees an arm out the window. He never sees Mr. Villareal's head
24 or upper torso to try to lean back. That's not what he
25 describes. He sees an arm sticking out the window and hears

1 pops and flash and, in the moment, chooses to describe it as,
2 they're firing out the window.

3 Now, again, I was focused on that in the initial
4 motion. After submitting it and listening to additional
5 portions of the body cam, yes, he says, you know, "You were
6 firing at me." And again, in the general sense, yes, they were
7 firing out the window at him to scare him, but I think that
8 that statement is different than, the gun was pointed at me,
9 or, there are shots near me or, you know, in the road or
10 they're hitting my car things like that, is how I feel that
11 would have been described if that's what was happening.

12 THE COURT: I think I understand your argument, but
13 it's hard to square those two things. There's a difference
14 between firing at a field to scare someone because of just the
15 sound of a gun going off--although whether you'd hear it at
16 130 miles an hour during a chase, I'm not sure--and firing at a
17 person. Those two things are different, no?

18 I mean, your argument might be, well, they're just
19 using loose language, but if he's just--if your position is,
20 well, he was just firing at a field, that's very different than
21 firing either at or in the general--even in the general
22 direction of people, no? What am I missing?

23 MR. IVERSON: Yes. But I don't feel there's
24 evidence to show the gun was pointed at the deputy.

25 THE COURT: Well, we have his statement and then a

1 sworn factual resumé that he discharged the firearm at the
2 deputy.

3 MR. IVERSON: Again, the deputy is saying that
4 after the fact, and--

5 THE COURT: And he agreed with it, no?

6 MR. IVERSON: We agreed with it in that general
7 sense that the only reason he's firing out into the field is so
8 the deputy will back off.

9 THE COURT: Sure.

10 MR. IVERSON: So in that sense, he's firing out at
11 the deputy to get him to back off. He wants him to see it. He
12 wants him to back off. They want to get away. And we're not
13 trying to skirt what that is. But I can't believe the deputy
14 would not have described--or--and the government certainly
15 carries the burden for relevant conduct on this--a follow-up
16 affidavit; yes, I saw the muzzle pointed back at me.

17 That isn't there. Again, in the moment, it's just
18 described as, they're firing out the window. And I don't think
19 the deputy would describe it that way if the gun was pointed at
20 him. And again, at those speeds and under those circumstances,
21 to get the muzzle of the gun pointed back--because clearly, in
22 the camera, you can see the vehicle is directly behind--the
23 pursuing vehicle is directly behind the defendant. They would
24 have to lean or, you know, point or come out the window a
25 little bit to get the gun to go backwards in a way that it

1 would actually be pointed directly behind the vehicle, and that
2 evidence just isn't there. So just the physicality of it,
3 along with the way it was described in the moment by the
4 deputy, it was being pointed out the window, out--directly out
5 the window into the field, not back directly behind the
6 vehicle. And I think the evidence supports that conclusion,
7 Your Honor.

8 THE COURT: Did you just assert that he would have
9 to have leaned out the window to be able to fire at-- I mean,
10 why--he can also just stick his arm out and spin it around
11 without his body coming out of the window, no?

12 MR. IVERSON: So--

13 THE COURT: That's physically possible?

14 MR. IVERSON: I think--so you're saying with the
15 right hand-- So he's in the passenger's seat, so I think, even
16 with the right hand, the mobility and the risk to get it
17 directly behind, without coming--at least some part of your
18 torso or head--out the window, I would describe as very, very
19 difficult, if not impossible.

20 THE COURT: Yeah, I agree with the right hand. I
21 did mean the left hand, just--if we're just trying to scare
22 somebody off, but-- But I understand what you're saying.

23 MR. IVERSON: Yeah.

24 THE COURT: Okay.

25 MR. IVERSON: And--

THE COURT: Let's resolve this objection first, and then we'll move on to your other one.

MR. IVERSON: Okay.

THE COURT: Anything else on this objection?

MR. IVERSON: No, Your Honor.

THE COURT: All right. Mr. McLeod?

MR. MCLEOD: Your Honor, briefly. Just for the reasons stated in the government's response, it is clear that the defendant was shooting at the deputy. The deputy--or the officer states several times, after the chase is completed, that he believed that the defendant was shooting at him, and it defies logic to state in a factual resumé that you were shooting at the deputy and then to claim, after seeing the presentence report, well, actually, I was just firing out into a field. It just doesn't make sense, Your Honor, and the government asks that you overrule the objection.

THE COURT: All right. Thank you, Mr. McLeod.

All right. Having reviewed the evidence, having considered both sides' objection and response and the PSR and the PSR addendum, I am going to overrule the objection.

Probation correctly applied the guidelines in calculating the base offense level at 27, given everything that's before me.

It's clear, obviously, that the defendant did not wish to be taken into custody. The high-speed chase, of which the defendant was a part, involved speeds of greater than

1 130 miles an hour and the violation of multiple other traffic
2 offenses, of course, including running red lights. After the
3 car ran out of gas, the defendant and the driver attempted to
4 flee on foot. And, while driving--or during the flight, the
5 defendant admitted in the factual resumé that he stuck his arm
6 out of the passenger window and fired to six to eight shots at
7 the deputies.

8 I understand the argument about that language and
9 the argument about what the defendant reported, reporting that
10 the defendant fired at him. I think the better reading of that
11 language and those statements, especially given the surrounding
12 circumstances, are that he is firing at the deputies and not
13 just at a field. It strains credulity, given the facts
14 admitted to, that the defendant was merely shooting into a
15 field to try to scare them off at that speed and under those
16 circumstances. The defendant admitted he was shooting at the
17 deputies. As detailed by the government and as observable in
18 their exhibits, the deputies' impression was that Villareal was
19 shooting at them. See Docket Number 33 at 1 to 3.

20 And, even if this is just shooting in the general
21 direction of the deputies, the Fifth Circuit has upheld the
22 application of 2A2.1(a), which is the more stringent provision,
23 where a defendant had fired in the general direction of a
24 person. See *United States vs. Bell*, 2023 WL 7549508 at 1, a
25 Fifth Circuit case from November of 2023. So the Court finds

1 that the base offense level was correctly calculated and
2 overrules this objection.

3 The exhibits were attached to your response; is
4 that right?

5 MR. McLEOD: The exhibits were video exhibits, and
6 I believe they were submitted to the Clerk's Office the same
7 day as the motion was filed.

8 THE COURT: Okay. They're just referenced. All
9 right. I understand. Did you want to admit those into
10 evidence?

11 MR. McLEOD: Yes. I beg your pardon, Your Honor.
12 The government moves to admit Government's Exhibits A and B
13 into evidence.

14 THE COURT: Any objection?

15 MR. IVERSON: No objection, Your Honor.

16 THE COURT: And that's the dash cam and the body
17 cam?

18 MR. McLEOD: Correct, Your Honor.

19 THE COURT: All right. Those are admitted, and I
20 will ask the government to keep the originals of those.

21 All right. Your second objection, the two-level
22 enhancement, creating a substantial risk of death or serious
23 bodily injury.

24 MR. IVERSON: So, Your Honor, in the government's
25 response, they point out this idea that, you know, one car

1 chase can be temporally and geographically separated, and they
2 cite cases about that. So the enhancement under 3C1.2 for the
3 initial speeding through Levelland, the government fails to
4 establish-- If they're going to separate the chase into kind
5 of the initial part in Levelland, the initial pursuit, and then
6 the pursuit, you know, at 130 miles an hour when my client
7 fires out the window, they cite no evidence that my client
8 abetted or assisted or participated in that initial chase in
9 any way.

10 So if we're going to temporally separate them out,
11 in that initial chase in Levelland, the driver takes off
12 because he's got a warrant. They're not--you know, they didn't
13 steal the car; they weren't doing some immediate criminal
14 activity that they both need to flee. It's that he's got a
15 warrant, and that's why he takes off. And there's nothing that
16 my client does in that initial portion of the chase to aid,
17 abet, or participate in that chase.

18 Now, we obviously accept that, yes, later on in the
19 chase, if we're going to temporally and--separate them, yes, as
20 soon as he fires out the window to get deputies to back off,
21 now he's participating. Now he is responsible for the conduct
22 from that time forward and participating in the chase.

23 But in the government's own response, those are the
24 facts that they acknowledge shows that he aided, abetted, or
25 participated in the chase, is the firing out the window and

1 then fleeing once the car comes to a stop. But in Levelland
2 itself, there's nothing that my client does to cause the chase
3 to occur, to participate in it.

4 And so to enhance for that reason is why I'm
5 objecting, saying the conduct where he now becomes a part of it
6 is the firing out the window, and he's already being enhanced
7 six levels for that. And the guideline says don't enhance for
8 the same conduct. And the government fails to point to any
9 other conduct by my client to connect him to that initial
10 portion of the chase that that enhancement in paragraph 34 is
11 being applied, Your Honor.

12 THE COURT: All right. Thank you, Mr. Iverson.

13 Mr. McLeod?

14 MR. MCLEOD: Yes, Your Honor.

15 The facts indicate that the defendant was a willing
16 participant throughout. It's-- Again, it doesn't make sense
17 that, only after getting through town, he finally decides, oh,
18 well, now I guess I'll participate; now that we're--now that
19 we're out of town, I'll start shooting, and then when the car
20 stops, I'll get out and run.

21 Those facts indicate that he was a willing
22 participant throughout and that he assisted throughout and
23 encouraged and aided and abetted. And, Your Honor, the
24 government asks, respectfully, that you overrule this objection
25 as well.

1 THE COURT: So tell me more about that. So the
2 fact that, later, we know he's firing out the window is
3 evidence that, earlier in the chase, he was also actively
4 participating, just that they're in it together, I guess, and--

5 MR. MCLEOD: Yes, Your Honor. The government
6 believes that it is a massive leap to go from, I'm not
7 participating in this offense, to then shooting at officers.
8 And not just one time shooting at officers; in two separate
9 incidents during the chase at these speeds and through these
10 areas.

11 It's just not rational to think that a person is
12 sitting in the passenger's seat thinking, man, I want no part
13 of this, and then, 30 seconds, a minute, minute and a half
14 later says, you know what, this is a great idea, and now I'm
15 going to join in and participate.

16 Again, he could have abandoned this chase and
17 provided some of his own justification. He could have not run
18 when the vehicle fled. He could have said, I was shooting to
19 scare you. He could have abandoned the flight even when the
20 vehicle stopped. But he didn't do that. And the repeated
21 conduct showing his participation in the flight indicates
22 strongly that, throughout the entire flight, he was assisting,
23 aiding, abetting, encouraging, Your Honor.

24 THE COURT: All right. Thank you, Mr. McLeod.

25 I agree. I'm going to overrule the objection.

1 Given the totality of the circumstances here and given the
2 totality of the evidence and for the reasons stated by both the
3 United States and Probation, the objection is overruled. The
4 two enhancements were both correctly applied because they refer
5 to different conduct, and there is no improper double-counting
6 here. Under 3A1.2(c)(1), that guideline applies where a
7 defendant, or a person whose conduct the defendant is
8 responsible for, creates a substantial risk of serious bodily
9 injury to a law enforcement officer. The defendant met that
10 threshold when he became an active participant in the chase and
11 fired his firearm at the deputies.

12 3C1.2 applies where the defendant, in flight from
13 law enforcement officers, creates a substantial risk of death
14 or serious injury to another. The defendant met that threshold
15 because, as an active participant in the case, he is
16 responsible for the driver driving at exorbitant speeds--again,
17 approximately 130 miles an hour--through several red lights.
18 And, of course, the Fifth Circuit does apply this enhancement
19 and has affirmed the application of the enhancement when the
20 defendant is an active participant; cases like *Johnson*,
21 2022 WL 16956797.

22 And, here, given all of the evidence before me, it
23 has been established by a preponderance that he was an active
24 participant. The conduct here is too extreme and too extensive
25 from beginning to end, including some actions of which

1 obviously were the defendant's, indisputably, that he was also
2 an active participant throughout the chase. So that objection
3 is also overruled.

4 Mr. Iverson, I think that takes care of all of your
5 objections. Were there any remaining?

6 MR. IVERSON: No, Your Honor, no remaining
7 objections.

8 THE COURT: All right. Thank you.

9 Any objections from the United States?

10 MR. MCLEOD: No, Your Honor.

11 THE COURT: Having resolved all the objections, I
12 do adopt the PSR and the PSR addendum's factual findings and
13 legal conclusions as my own.

14 The statutory sentencing range, or the total
15 possible range of punishment here, is a term of imprisonment of
16 not more than 15 years; a fine of \$250,000, or both; and a
17 period of supervised release of up to 3 years.

18 Under the guidelines manual, we have a total
19 offense level of 32; your criminal history category is V; and
20 that results in an advisory guideline range of 188 to
21 235 months. But, because your statutory maximum is 180 months,
22 or 15 years, that becomes your guideline range--your advisory
23 guideline range.

24 All right. Mr. Iverson, I would be glad to hear
25 any evidence or argument you have on behalf of your client.

1 MR. IVERSON: Thank you, Your Honor.

2 In looking-- Let me begin with a recommendation
3 for FCI Three Rivers, Your Honor.

4 THE COURT: That's granted.

5 MR. IVERSON: I tend to forget that if I don't do
6 that at the beginning.

7 And secondly, looking at Mr. Villareal's
8 background, he was born later in his mother's life. She was in
9 her forties. She had prior children before. And
10 unfortunately, his biological father passed away when he was
11 about four or five from cirrhosis of the liver, and so he
12 didn't really have a relationship with his biological father.
13 He was raised by his mother.

20 So those difficult circumstances as a young
21 adolescent, without that kind of guidance and direction in his
22 life, in some ways contribute to where he was at. Being in the
23 car that day, as I stated in my argument, there was no--they
24 didn't steal a car. There was no active crime going on that
25 they were fleeing from. The cops tried to pull them over for a

1 broken taillight. The driver had a warrant and they took off.
2 It was just kind of a circumstance.

3 Now, the circumstance occurred because, yeah, he's
4 hanging out with somebody with a warrant. He was under the
5 influence of methamphetamine at the time. Again, there was
6 user--I think a pipe with some residue, user amounts. There
7 was no dealing going on or those kind of quantities found. But
8 again, this lifestyle that he had fallen into, this drug
9 addiction contributed to this. But I ask the Court consider
10 that fact, that it was from a young age, thirteen years old,
11 where he's developing these substance abuse habits and
12 addictions.

13 But Mr. Villareal--even though the objection has
14 been overruled, it's important for him to know that in that
15 moment, his intent was not to kill or harm deputies. He
16 understands what a horrible decision that was, under the
17 influence of methamphetamine at the time. But, you know, the
18 gun still had rounds in it. He didn't get out of the car with
19 the gun, trying to shoot at the deputy then.

20 You know, there's--things could have gone a lot
21 worse, but that's not who he is. That's not what his intent
22 was in that moment, and we ask the Court-- Despite the
23 guidelines and what they look like, it could have gone worse.
24 Like I said, there was a round in the chamber, one in the
25 magazine still. He chose to leave it in the vehicle and try to

1 elude that way.

2 And the circumstances that put him there, again,
3 somebody with a warrant, just bad timing and some bad luck and
4 some poor decisions put him here. But this is not a man that
5 was out doing horrible things, dealing drugs or assaulting
6 people. It was just the circumstances of that day that put him
7 here before you, and his bad choices, and he'll acknowledge
8 that, Your Honor.

9 But we ask that you consider, having overruled our
10 objections-- We believe the guidelines would have come out
11 obviously much lower, but I ask that you now consider a
12 downward variance to 120 months, Your Honor. Given the
13 objections that were overruled, we still feel like that would
14 be a just sentence, given the facts of this case and kind of
15 how they came to be.

16 Thank you, Your Honor.

17 THE COURT: Okay. Thank you, Mr. Iverson. I have
18 heard your argument, and I will consider it all. I also will
19 consider your request for a downward variance to 120 months.

20 In your view, had I sustained all your objections,
21 what's the advisory guideline range, in your view?

22 MR. IVERSON: Your Honor, had you sustained all of
23 my objections, the guideline range would have come down to 21,
24 so that would have been 70 to 87 months, Your Honor.

25 THE COURT: All right. Thank you. I will consider

1 that as well.

2 All right. Mr. Villareal, you have the right to
3 tell me anything you would like to tell me. You don't have to
4 say anything if you don't want to. I won't hold it against you
5 if you don't. Is there anything you'd like to say?

6 THE DEFENDANT: Yes, sir. I'd like to apologize
7 for my behavior. I accept full responsibility for my actions,
8 and I respect the Court's decision, whatever is made today.

9 THE COURT: Okay. All right. Thank you, sir.

10 Okay. Mr. McLeod?

11 MR. MCLEOD: Yes, Your Honor.

12 The government is respectfully requesting a
13 sentence of 180 months. The guidelines came out to 188 to 235,
14 and 180 months is obviously below the guidelines, because
15 that's the statutory maximum for this offense.

16 The defendant referenced the kind of person that he
17 is, and, Your Honor, I think we can look at his criminal
18 history to know what kind of a person he is. Not his best
19 intentions, not the things he says, but the things he does,
20 Your Honor.

21 And this is a person who has chosen to commit
22 multiple weapons offenses. This is a person who chooses to put
23 his hands on women, to assault and abuse the mother of his
24 children. And not just one woman. Two women. This is a
25 person who decides to victimize some of the weakest people in

1 our community.

2 Your Honor, he wants to rationalize his behavior
3 for this offense by stating that his father died when he was
4 young and he has a drug problem. Your Honor, those might
5 explain certain criminal behavior, but it's certainly no excuse
6 for his actions that night. And to ask for leniency under
7 those circumstances, given his criminal history and the conduct
8 that he engaged in, willfully and repeatedly firing that
9 weapon, lying about it afterwards, attempting to avoid
10 responsibility and put the blame on the driver of the vehicle,
11 this shows that he is someone who has no respect for the law.
12 He is a danger to the community, and he has not been deterred
13 by his prior sentences, Your Honor. And for that reason, the
14 government is respectfully requesting 180 months.

15 THE COURT: Thank you, Mr. McLeod. Mr. McLeod, do
16 you know any reason why the Court cannot lawfully impose
17 sentence at this time?

18 MR. MCLEOD: No, Your Honor.

19 THE COURT: Mr. Iverson?

20 MR. IVERSON: No, Your Honor.

21 THE COURT: I have carefully reviewed the PSR and
22 its addendum. I inform the defendant that the plea agreement
23 is finally accepted. Judgment and sentence will be consistent
24 with it.

25 I am required by statute to impose a sentence that

1 is sufficient, but not greater than necessary, to comply with
2 the purposes of sentencing set forth in Section 3553(a)(2), and
3 to consider all of the sentencing factors in that statute,
4 which I have done.

5 I've considered here the nature and circumstances
6 of your offense. We've already discussed those in detail, but
7 suffice it to say that this is one of the worst felon-in-
8 possession cases that I've seen, because it's much more than
9 felon in possession. That you would be willing, whether under
10 the influence or not, to fire a gun multiple times at law
11 enforcement officers is hard to fathom, the complete disregard
12 for the safety of those around you. And you're just, at the
13 very least, incredibly dangerous, and reckless disregard for
14 the community, speeding at that rate through a community,
15 firing a gun at and in the general direction of law enforcement
16 officers, even if it's just to scare them. You're firing a gun
17 at that rate of speed, and who cares who is on the other end of
18 that bullet. That is incredibly concerning conduct, and I
19 can't ignore it.

20 Now, I also consider your history and your
21 characteristics, and I have considered and I will consider your
22 personal history that your attorney has told me and that is
23 detailed in your presentence report.

24 I also consider your criminal history. And your
25 criminal history, when combined with your conduct in this case,

1 is incredibly concerning to me, because it involves guns,
2 drugs, and violence.

3 We have, as a juvenile, delinquent conduct,
4 unlawfully carrying a weapon in prohibited places, engaging in
5 organized criminal activity. As an adult, domestic assault;
6 and then another assault/family member with one prior;
7 possession of a controlled substance, methamphetamine, 1 to
8 4 grams; another domestic assault with prior; and now here we
9 are, felon in possession and you firing a gun multiple times at
10 law enforcement officers.

11 That is a ticket to exactly where you are right
12 now, and just by grace or good fortune did no one get
13 seriously, seriously injured in this. But that's where your
14 conduct and your just--your reckless decisions were leading.
15 And your attorney is right. It could have been much worse, and
16 today could be much worse for you, and that's just, again,
17 thanks to luck or grace, not thanks to any of your decisions.
18 Your decisions were incredibly dangerous and unwise.

19 I've also considered the need to impose a sentence
20 that reflects the seriousness of the offense, and this is a
21 very serious one.

22 I have to promote respect for the law. Thus far,
23 you have shown little, if any, respect, even if it is-- You
24 know, again, I recognize that you had a lack of role models and
25 that you have drug use in your past. There's a lot of people,

1 unfortunately, with a lack of role models and drug use. Most
2 of them don't end up in a car, going 130 miles an hour,
3 shooting a gun multiple times out a window. That's rare, and
4 that is very serious and shows little respect for the law.

5 I have to provide a just punishment; I have to
6 afford adequate deterrence; and I have to protect the public.

7 After considering all of those factors, the
8 purposes of sentencing, and the parties' arguments, I have
9 determined that a sentence of 180 months is sufficient, but not
10 greater than necessary.

11 I inform both sides that, although I believe the
12 guideline calculations announced today were correct, to the
13 extent they were incorrectly calculated, I would have imposed
14 the same sentence without regard to that range, and I would
15 have done so for the same reasons, in light of the 3553(a)
16 factors.

17 Again, when I couple your conduct in this case,
18 your willingness to fire a gun out a window at that rate of
19 speed after an already extensive car chase, with your criminal
20 history, which shows actual violence and drugs, you are
21 incredibly dangerous. I hope that this time mellows you and
22 you start to think about what in the world have I done and how
23 do I find a way to never do it again. I genuinely hope that's
24 the case. But unless and until that happens, incapacitation is
25 important, and protection of the public is important, and I

1 would impose a sentence of 180 months, the statutory maximum in
2 this case.

3 The sentence is going to run concurrently with any
4 sentence that may be imposed in Case Number 230110427 pending
5 in the 286th District Court of Hockley County, Texas. Again,
6 concurrently with that case. It is related to this offense.

7 Upon release from imprisonment, you're going to be
8 on supervised release for a term of 3 years. While on release,
9 you shall comply with the mandatory conditions of release
10 listed in your presentence report and in Section 3583(d).

11 Mr. Iverson, can you confirm that you and your
12 client received and discussed my written notice of intent to
13 impose the standard and special conditions?

14 MR. IVERSON: Yes, Your Honor. We have received
15 that, we have reviewed it, and we have no objections, Your
16 Honor.

17 THE COURT: Thank you, sir.

18 Hearing no objections, they are adopted today.
19 They will be included in my judgment. I find they are
20 reasonable and they relate to all of the appropriate statutory
21 considerations, and they impose no greater deprivation of
22 liberty than reasonably necessary under the statute.

23 I find that the defendant does not have the ability
24 to pay a fine, so I'm going to waive a fine in this case.

25 But the defendant must pay the United States the

1 mandatory special assessment of \$100, due and payable
2 immediately.

3 It's also ordered that the defendant's interest in
4 the following property is condemned and forfeited to the
5 United States: a Smith and Wesson, model SD40, .40 caliber
6 pistol with a serial number that ends in 971, and any
7 ammunition, magazines, and/or accessories recovered with that
8 firearm.

9 Sir, you do have the right to appeal your
10 conviction and your sentence. If you'd like to appeal, you
11 need to file a notice of appeal within 14 days of today in this
12 court. If you want to do that, just tell your attorney. He is
13 very familiar with that process, and he can get that done for
14 you.

15 He can also ask that the costs of the appeal go to
16 the United States, and not to you.

17 Do you understand those rights, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Iverson, anything else from the
20 defense?

21 MR. IVERSON: Your Honor, I would argue that the
22 sentence is substantively unreasonable for the arguments that I
23 have made today.

24 THE COURT: I understand that. I did hear your
25 request for a lower sentence, a downward variance sentence of

1 120 months. For all the reasons I stated, that motion is
2 denied and was denied. But your objection to the length of the
3 sentence being unreasonable is preserved for appeal.

4 Anything else from the United States?

5 MR. MCLEOD: No, Your Honor. Thank you.

6 THE COURT: All right. At this time,
7 Mr. Villareal, I remand you to the custody of the United States
8 Marshal, and I wish you good luck, sir.

9 THE DEFENDANT: Thank you.

10 (END OF HEARING)

11

12 I, Mechelle Daniel, Federal Official Court Reporter in and
13 for the United States District Court for the Northern District
14 of Texas, do hereby certify pursuant to Section 753,
15 Title 28, United States Code, that the foregoing is a true and
correct transcript of the stenographically reported proceedings
held in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the Judicial
Conference of the United States.

16

17 /s/ Mechelle Daniel **DATE** FEBRUARY 28, 2024

18 MECHELLE DANIEL, CSR #3549
19 FEDERAL OFFICIAL COURT REPORTER

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22

23

24

25

Mechelle Daniel, Federal Official Court Reporter
(806) 744-7667

24-10074.112

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

SEP 11 2023 AM9:41
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UNITED STATES OF AMERICA

v.

LEOPOLDO VILLAREAL

NO. 5:23-CR-075-H

FACTUAL RESUME

In support of Leopoldo Villareal's plea of guilty to the offense in Count One of the Indictment, Villareal, the defendant, Wade Iverson, the defendant's attorney, and the United States of America (the government) stipulate and agree to the following:

ELEMENTS OF THE OFFENSE

To prove the offense alleged in Count One of the Indictment, charging a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8), that is, Convicted Felon in Possession of a Firearm, the government must prove each of the following elements beyond a reasonable doubt:¹

- First.* That the defendant knowingly possessed a firearm as charged;
- Second.* That before the defendant possessed the firearm, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year;
- Third.* That the defendant knew he had been convicted in a court of a crime punishable by a term of imprisonment in excess of one year; and
- Fourth.* That the firearm possessed traveled in interstate or foreign commerce; that is, before the defendant possessed the firearm, it had traveled at some time from one state to another or between any part of the United States and any other country.

¹ Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2019).

STIPULATED FACTS

1. Leopoldo Villareal, defendant, admits and agrees that on or about December 1, 2022, in the Lubbock Division of the Northern District of Texas, and elsewhere, knowing he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, he did knowingly possess in or affecting interstate or foreign commerce a firearm, to wit: a Smith and Wesson, model SD40, .40 caliber pistol, serial number HFZ2971, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(8).

2. On December 1, 2022, Leopoldo Villareal was the passenger in a black Ford sedan that fled from Levelland, Texas, Police Department officers attempting to stop it for a traffic violation. A deputy of the Hockley County, Texas, Sheriff's Office joined the pursuit. During the pursuit, which reached sustained speeds of approximately 130-135 miles per hour, the deputy observed Villareal extend his arm out of the front passenger window and discharge a firearm at the deputy approximately six to eight times. When the Ford ran out of gas and came to a stop, Villareal exited the vehicle and continued to flee on foot. The deputy used non-lethal force to subdue Villareal and take him into custody.

3. Deputies found a Smith and Wesson, model SD40, .40 caliber pistol, serial number HFZ2971, in the floorboard of the Ford behind the driver's seat. Agents obtained a search warrant and collected DNA from Villareal by swabbing the inside of his cheek with two buccal swabs. The DPS crime laboratory in Lubbock performed a forensic DNA analysis of the .40 caliber pistol recovered from the Ford, the magazine in the

Leopoldo Villareal
Factual Resume—Page 2

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pistol, and the DNA sample of Villareal. A DNA profile consisting of a mixture of three individuals' DNA was detected on the pistol and the magazine. The profile indicated the presence of Villareal's DNA on the pistol in that the probability of obtaining the profile if the DNA came from Villareal and two unrelated, unknown individuals is 109 sextillion times greater than the probability of obtaining the profile if the DNA came from three unrelated, unknown individuals. The profile indicated the presence of Villareal's DNA on the magazine in that the probability of obtaining the profile if the DNA came from Villareal and two unrelated, unknown individuals is 369 sextillion times greater than the probability of obtaining the profile if the DNA came from three unrelated, unknown individuals. The results of the forensic examination eliminated the driver of the Ford as a contributor to the DNA profile found on the pistol and magazine. Villareal admits that he knowingly possessed the firearm described in this factual resume.

4. Before December 1, 2022, Villareal had been convicted of two felony offenses. He was convicted of Assault of a Family Member with One Prior Conviction in the 137th District Court of Lubbock County, Texas, on November 17, 2009, and sentenced to eight years of probation. His probation was revoked on December 20, 2018, and he was sentenced to three years imprisonment. He was convicted of Possession of a Controlled Substance in the 137th District Court of Lubbock on ~~December 20, 2018~~
~~March 24, 2022~~, and sentenced to three years imprisonment. He was on parole for that offense at the time he possessed the firearm on December 1, 2022. The judgments of conviction for each of those offenses clearly stated that the offenses for which he was convicted were felonies. Further, because Villareal served time in prison for those offenses, he knew he had been

Leopoldo Villareal
Factual Resume—Page 3

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convicted of a felony offense. As a convicted felon, it is unlawful for Villareal to possess a firearm.

5. A Special Agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigated the history of the Smith and Wesson, model SD40, .40 caliber pistol, serial number HFZ2971, possessed by Villareal on December 1, 2022, and determined that the firearm was manufactured outside of the State of Texas and sold to a purchaser in Hobbs, New Mexico. Therefore, prior to Villareal possessing the firearm, it had traveled in interstate or foreign commerce; that is, it had traveled at some time from the state of manufacture to New Mexico to Texas.

6. The defendant agrees that he committed all the essential elements of the offense. This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Count One of the Indictment.

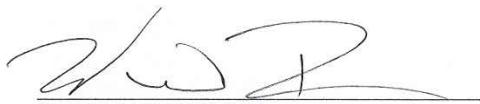
7. Because Villareal illegally possessed the firearm described in this factual resume, he agrees it, as well as any ammunition, magazines, or accessories recovered with the firearm, should be forfeited to the United States under 18 U.S.C. § 924(d).

AGREED TO AND STIPULATED on this 7th day of September, 2023.

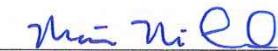
LEIGHA SIMONTON
UNITED STATES ATTORNEY



LEOPOLDO VILLAREAL
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**Excerpts of Sentencing Transcripts
From Other Cases**

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| Sent. Tr. at 54 <i>United States v. Bishop,</i> No. 5:23-cr-63 (N.D. Tex.) Sentencing Date: Feb. 15, 2024 | I find and I inform both sides that I believe the guideline calculations were correctly announced today, and correctly calculated, but even if they weren't, this is the sentence I would impose without regard to that range, and I would do so for the same reasons, in light of the 3553(a) factors. |
| Sent. Tr. at 19 <i>United States v. Castillo-Lopez,</i> No. 5:22-cr-98 (N.D. Tex.) Sentencing Date: Oct. 19, 2023 | I inform the parties that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors. |
| Sent. Tr. at 37 <i>United States v. Chavez,</i> No. 5:23-cr-29 (N.D. Tex.) Sentencing Date: Nov. 16, 2023 | I inform both sides that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors. |

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| <p>Sent. Tr. at 11 <i>United States v. Felix-Samaniego</i>, No. 5:23-cr-96 (N.D. Tex.)</p> <p>Sentencing Date: Mar. 21, 2024</p> | <p>I inform both sides that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p> |
| <p>Sent. Tr. at 19 <i>United States v. Hayden</i>, No. 5:23-cr-80 (N.D. Tex.)</p> <p>Sentencing Date: Feb. 1, 2024</p> | <p>I inform both sides that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p> |
| <p>Sent. Tr. at 26 <i>United States v. Hazen</i>, No. 6:23-cr-12 (N.D. Tex.)</p> <p>Sentencing Date: Dec. 7, 2023</p> | <p>I inform both sides that I believe the guideline calculations announced today were correct, but, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p> |

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| <p>Sent. Tr. at 16 <i>United States v. Jones</i>, No. 5:23-cr-13 (N.D. Tex.)</p> <p>Sentencing Date: Oct. 5, 2023</p> | <p>I inform the parties that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons.</p> |
| <p>Sent. Tr. at 18 <i>United States v. Meyer</i>, No. 5:23-cr-57 (N.D. Tex.)</p> <p>Sentencing Date: Dec. 14, 2023</p> | <p>I inform both sides that, although I believe the guideline calculations announced were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p> |
| <p>Sent. Tr. at 39 <i>United States v. Pyle</i>, No. 5:23-cr-92 (N.D. Tex.)</p> <p>Sentencing Date: April 4, 2024</p> | <p>I'm going to inform both sides that I believe the guideline calculations announced today were correct, but, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors here.</p> |

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| <p>Sent. Tr. at 29 <i>United States v. Reyes,</i> No. 5:23-cr-65 (N.D. Tex.)</p> <p>Sentencing Date: Feb. 29, 2024</p> | <p>I announce that, although I believe the guideline calculations were correct here, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to this range, and I would have done so for the same reasons.</p> |
| <p>Sent. Tr. at 15 <i>United States v. Sanchez,</i> No. 5:23-cr-30 (N.D. Tex.)</p> <p>Sentencing Date: Sept. 21, 2023</p> | <p>I believe that the guideline calculations that I announced were correct, but, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p> |
| <p>Sent. Tr. at 14–15 <i>United States v. Thomas,</i> No. 5:22-cr-65 (N.D. Tex.)</p> <p>Sentencing Date: July 26, 2023</p> | <p>I inform the parties that, although I believe the guideline calculations announced were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p> |

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| <p>Sent. Tr. at 13 <i>United States v. Thompson,</i> No. 5:23-cr-32 (N.D. Tex.)</p> <p>Sentencing Date: Nov. 16, 2023</p> | <p>I inform both sides that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p> |
| <p>Sent. Tr. at 14 <i>United States v. Truelock,</i> No. 5:23-cr-37 (N.D. Tex.)</p> <p>Sentencing Date: Oct. 26, 2023</p> | <p>I believe and I inform the parties that I believe that the guideline calculations announced today were correct, but, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p> |