

United States Court of Appeals For the First Circuit

No. 23-1174

UNITED STATES,

Appellee,

v.

HANSEL JANEL RIJO-GUERRERO,

Defendant - Appellant.

Before

Montecalvo, Kayatta and Rikelman,
Circuit Judges.

JUDGMENT

Entered: December 18, 2024

Defendant-Appellant Hansel Janel Rijo-Guerrero appealed his within-guideline 188-month sentence that was imposed upon him after pleading guilty to drug smuggling charges. He argues that the district court committed reversible error in imposing a two-level navigator enhancement under U.S.S.G. § 2D1.1(b)(3)(C), and created an unwarranted sentencing disparity between him and his co-defendants which the judge failed to adequately explain when rejecting his argument for a downward variance. Defendant-Appellant claims that his sentence is procedurally unreasonable for these reasons, and he also claims that the judge failed to take account of his dire financial circumstances as a Dominican citizen when determining his sentence. The government has opposed, arguing that the district court properly found that Defendant-Appellant acted as a navigator of the vessel and that his sentence is procedurally and substantively reasonable. Having reviewed the record below and the parties' arguments, we summarily affirm.

I. Background

Defendant-Appellant and two other individuals were operating a small, single-engine vessel (known as a yola) without visible navigational lights heading toward the western coast of Puerto Rico when they were apprehended by U.S. Customs and Border Protection (CBP). After CBP agents ordered the individuals to show their hands, Defendant-Appellant jumped into the

water and subsequently reboarded the yola. Ignoring commands to show his hands and stop moving, he reached into his pocket to remove a solid object and threw it into the water. Fearing Defendant-Appellant had a weapon, a CBP agent fired his gun, striking Defendant-Appellant on his shoulder.

Approximately 58 kilograms of cocaine were recovered from the yola. In the post-arrest interviews, one co-defendant admitted that he was the captain of the yola. The other co-defendant testified that Defendant-Appellant was operating the global positioning system (GPS) and that he overhead Defendant-Appellant tell the captain "estamos a vente" (we are 20 away).

Defendant-Appellant's cohorts pled guilty to one count in the indictment pursuant to plea agreements with the government, but Defendant-Appellant rejected the government's offer and proceeded to trial. On the first day of trial, after jury selection, Defendant-Appellant entered a straight plea of guilty as to all four counts in the indictment.

At his sentencing hearing, Defendant-Appellant prefaced his arguments with a reminder to the court about the financial crisis in the Dominican Republic and then proceeded to argue for a sentence of 120 months "based on parity" with his co-defendants, one of whom was sentenced to 87 months' imprisonment after complying with the safety valve and one who was sentenced to the mandatory minimum.

II. Discussion

A. Procedural Reasonableness

We find that the district court judge did not err in applying the two-level pilot-navigator enhancement under U.S.S.G. § 2D1.1(b)(3)(C) to Defendant-Appellant's base offense level because the government proved that it was more likely than not that he operated the GPS when considering the totality of the circumstances. See United States v. Mendoza-Maisonet, 962 F.3d 1, 20 (1st Cir. 2020) ("Where, as here, the defendant 'challenges the factual predicate . . . of a sentencing enhancement, we ask only whether the court clearly erred in finding that the government proved the disputed fact by a preponderance of the evidence.'") (quoting United States v. Colby, 882 F.3d 267, 271 (1st Cir. 2018)). The government argued at the sentencing hearing that Defendant-Appellant "was in possession of an object believed from all of the evidence to be a GPS device, because it is highly improbable for this crew, any crew, to travel from the Dominican Republic to our shores without that device." See United States v. Trinidad, 839 F.3d 112, 115 (1st Cir. 2016) ("the District Court reasonably concluded that [the defendant] must have relied on the GPS to keep the boat on course").

Putting all the evidence together - the co-defendant's statements, the video showing Defendant-Appellant throwing a large, black object into the water, and that a GPS was never recovered from the yola - we find that the judge made a logical inference that Defendant-Appellant was the navigator of the yola, and properly applied the two-level enhancement.

We reject the other three grounds on which Defendant-Appellant argues that his sentence is procedurally unreasonable because our review reveals that the district court properly interpreted

and applied the sentencing guidelines. See United States v. Coleman, 854 F.3d 81, 84-85 (1st Cir. 2017).

As the government pointed out, several of Defendant-Appellant's arguments are arguably waived because they were not raised below, and then he failed to brief the plain error standard on appeal. See United States v. Padilla, 415 F.3d 211, 218 (1st Cir. 2005). Even if we consider his arguments on the merits, we reject them for the reasons provided.

First, we find that the judge adequately explained his reasons for rejecting Defendant-Appellant's argument for a downward variance to bring his sentence to 120 months "based on parity with the other co-defendants." The judge pointed out that Defendant-Appellant was unlike his co-defendant who had met the safety-valve requirements which allowed him to be sentenced below the mandatory minimum. The judge explained that he was adopting the guidelines computation in the presentence investigation report (PSR) which included the two-level pilot-navigator enhancement and a two-level reduction for acceptance of responsibility. That Defendant-Appellant's sentence was considerably longer than those of his co-defendants indicates that the judge reasoned that their level of culpability differed. And further, since the judge adopted a sentence within the guidelines sentencing range, there was no need for more detailed explanation. See United States v. Peter, 637 F.App'x 6, 8-9 (1st Cir. 2016) (unpublished) (rejecting defendant's suggestion that the judge did not adequately explain the rationale for the within-the-range sentence because "we can infer from the presentence papers and arguments that the judge considered [the defendant's] points before selecting a sentence.").

Second, we find that the district court committed no error in imposing disparate sentences among Defendant-Appellant and his co-defendants. We have held "[t]o establish a well-founded claim of sentencing disparity, a defendant must 'compare apples to apples.' Where 'material differences between the defendant and the proposed comparator suffice to explain the divergence,' a sentencing disparity claim is unlikely to prevail." United States v. Coplin-Benjamin, 79 F.4th 36, 43 (1st Cir. 2023) (citations omitted). As described above, there were material differences between Defendant-Appellant and his co-defendants that warranted different sentences. Further, as the judge indicated at sentencing, Defendant-Appellant's actions in resisting arrest upon encountering law enforcement on the water set him apart from his co-defendants. For these reasons, Defendant-Appellant's claim of disparity is meritless. See United States v. Bishoff, 58 F.4th 18, 26 (1st Cir.), cert. denied, 143 S.Ct. 2481 (2023) ("the permissible distinction between co-defendants who go to trial and those who plead guilty, [and] between those who cooperate and those who do not, . . . undermine an assertion of unjustified disparity.") (quoting United States v. Reyes-Santiago, 804 F.3d 453, 467 (1st Cir. 2015)).

Third, we find that the record reflects that the district court gave adequate attention to Defendant-Appellant's financial circumstances in determining his sentence. The judge stated in open court that Defendant-Appellant is a citizen of the Dominican Republic and was unemployed prior to his arrest. See 18 U.S.C. § 3553(a)(1) ("The court . . . shall consider--(1) the nature and circumstances of the offense and the history and characteristics of the defendant;"). These factors about Defendant-Appellant's history were also mentioned in his sentencing memoranda, his attorney's arguments before the court, and the amended PSR, giving the judge many opportunities to consider these factors. That the judge did not expressly say that he considered Defendant-

Appellant's financial difficulties when determining his sentence does not mean that they were not taken into consideration. See United States v. Lozada-Aponte, 689 F.3d 791, 793 (1st Cir. 2012) (The fact "that the district court did not explicitly mention [certain mitigating factors] during the sentencing hearing suggests they were unconvincing, not ignored."). It was within the judge's discretion to consider certain factors more significant than others in the determination of Defendant-Appellant's sentence. See United States v. Clogston, 662 F.3d 588, 593 (1st Cir. 2011) ("That the sentencing court chose not to attach to certain of the mitigating factors the significance that the appellant thinks they deserved does not make the sentence unreasonable."). Therefore, the treatment of Defendant-Appellant's dire financial situation is not a ground on which to find error in the judge's sentencing.

B. Substantive Reasonableness

We further conclude that Defendant-Appellant's sentence is substantively reasonable because the district court reached a defensible result that was supported by a plausible rationale articulated by the judge. See United States v. Ramos, 763 F.3d 45, 58 (1st Cir. 2014) ("The 'linchpin of a reasonable sentence is a plausible sentencing rationale and a defensible result.'") (quoting United States v. Martin, 520 F.3d 87, 96 (1st Cir. 2008)). The sentence imposed by the district court judge of 188 months of imprisonment is defensible because it falls within the guidelines imprisonment range of 151 to 188 months, based on a total offense level of 34 and a criminal history category of I. See United States v. Demers, 842 F.3d 8, 15 (1st Cir. 2016) ("A challenge to the substantive reasonableness of a sentence is particularly unpromising when the sentence imposed comes within the confines of a properly calculated GSR."). Although at the high end of the possible range, it is well below the life statutory maximum for the offenses. See United States v. Calderón-Lozano, 912 F.3d 644, 649 (1st Cir. 2019).

The district court judge also provided a plausible rationale for the sentence that included a two-level pilot-navigator enhancement, explaining how he inferred from all the evidence that Defendant-Appellant operated the GPS aboard the yola. See Ramos, 763 F.3d at 58. Before arriving at the sentence of 188 months, the judge reasoned that "the sentence recommended by the Government reflects the seriousness of the offense, promotes respect for the law, protects the public from additional crimes by Mr. Rijo, and addresses the issues of deterrence and punishment."

Since the judge articulated sufficient reasoning for the sentence, we defer to his findings. See United States v. Rivera-Morales, 961 F.3d 1, 21 (1st Cir. 2020) ("[W]e cannot substitute our judgment of the appropriate sentence for that of the sentencing court; to the contrary, we must accord significant deference to the court's informed determination that the section 3553(a) factors justify the sentence imposed.").

The judgment of the district court is summarily affirmed. See 1st Cir. L. R. 27.0(c).

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Michael March Brownlee
Hansel Janel Rijo-Guerrero
Max J. Perez-Bouret
Mariana E. Bauzá Almonte
Vanessa Elsie Bonhomme
Antonio L. Pérez-Alonso
Corinne Cordero-Romo
Michele Colón-Garcia
Luis Angel Valentín
Edwin Giovannie Mercado
Gabriella Sofia Paglieri

UNITED STATES DISTRICT COURT

District of Puerto Rico

UNITED STATES OF AMERICA

v.

HANSEL JANEL RIJO-GUERRERO

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:22-CR-038-03 (FAB)

USM Number: 83004-509

Edgar L. Sanchez-Mercado, Esq.

Defendant's Attorney

THE DEFENDANT:

 pleaded guilty to count(s) One (1), Two (2), Three (3) and Four (4) on October 24, 2022 pleaded nolo contendere to count(s) _____ which was accepted by the court. was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC § 952(a), 960(a)(1) and (b)(1)(B)	Conspiracy to import cocaine.	1/24/2022	One (1)
(ii), and 963			
21 USC § 952(a), 960(a)(1) and (b)(1)(B)	Importation of cocaine.	1/24/2022	Two (2)

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. The defendant has been found not guilty on count(s) _____ Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

2/8/2023

Date of Imposition of Judgment

/S/ FRANCISCO A. BESOSA

Signature of Judge

FRANCISCO A. BESOSA, SENIOR U.S. DISTRICT JUDGE
Name and Title of Judge

2/8/2023

Date

DEFENDANT: HANSEL JANEL RIJO-GUERRERO
CASE NUMBER: 3:22-CR-038-03 (FAB)

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
(ii) and 18 USC § 2			
21 USC § 841(a)(1) and (b)(1)(B)(ii), and 846	Conspiracy to Possess with Intent to Distribute a Controlled Substance.	1/24/2022	Three (3)
21 USC § 841(a)(1) and (b)(1)(A)(ii), and 18 USC § 2	Possession with Intent to Distribute Cocaine.	1/24/2022	Four (4)

DEFENDANT: HANSEL JANEL RIJO-GUERRERO
CASE NUMBER: 3:22-CR-038-03 (FAB)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

One Hundred Eighty-Eight (188) months as to each count one (1), two (2), three (3), and four (4) to be served concurrently with each other.

The court makes the following recommendations to the Bureau of Prisons:
 -- That the defendant be designated to Miami or Coleman.
 -- That the defendant be afforded while incarcerated vocational training courses, High School Diploma courses, and English-as-second-language courses.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:
 at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
 at _____, with a certified copy of this judgment.

 UNITED STATES MARSHAL

By _____
 DEPUTY UNITED STATES MARSHAL

DEFENDANT: HANSEL JANEL RIJO-GUERRERO

CASE NUMBER: 3:22-CR-038-03 (FAB)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Five (5) years as to each count one (1), two (2), three (3), and four (4) to be served concurrently with each other, under the following mandatory, standard, and Special/Additional Conditions of Supervision.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: HANSEL JANEL RIJO-GUERRERO
CASE NUMBER: 3:22-CR-038-03 (FAB)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: HANSEL JANEL RIJO-GUERRERO
CASE NUMBER: 3:22-CR-038-03 (FAB)

ADDITIONAL SUPERVISED RELEASE TERMS

1. He shall observe the standard conditions of supervised release recommended by the United States Sentencing Commission and adopted by this Court.
2. He shall not possess firearms, destructive devices, and any other dangerous weapons.
3. He shall not possess controlled substances unlawfully.
4. If removed or granted voluntary departure, Mr. Rijo shall remain outside the United States and all places subject to its jurisdiction unless prior written permission to reenter is obtained from the pertinent legal authorities and he notifies the Probation Officer of the permission in writing. If he re-enters the United States, he must report to the nearest probation office within 72 hours after his return.
5. He shall cooperate in the collection of a DNA sample, as directed by the Probation Officer, pursuant to the Revised DNA Collection Requirements, and Title 18, U.S. Code Section 3563(a)(9).
6. He shall submit himself and his property, house, residence, vehicles, papers and effects, computers and other electronic communication or data storage devices or media to a search, at any time, with or without a warrant, by the probation officer, and if necessary, with the assistance of any other law enforcement officer but only in the lawful discharge of the supervision functions of the probation officer, who must have a reasonable suspicion of unlawful conduct or of a violation of a condition of supervised release. The probation officer may seize any electronic communication or electronic device or medium which will be subject to additional forensic investigation or analysis. Failure to permit a search and seizure may be grounds for revocation of supervised release. Mr. Rijo shall warn any other resident or occupant that his premises may be subject to searches pursuant to this condition.

DEFENDANT: HANSEL JANEL RIJO-GUERRERO
CASE NUMBER: 3:22-CR-038-03 (FAB)**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$ 400.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ 0.00	\$ 0.00	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

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

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: HANSEL JANEL RIJO-GUERRERO
CASE NUMBER: 3:22-CR-038-03 (FAB)

SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ 400.00 due immediately, balance due

not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

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

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

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

TRANSCRIPT OF SENTENCING HEARING

HELD BEFORE

THE HONORABLE JUDGE FRANCISCO A. BESOSA
Wednesday, February 8, 2023

A P P E A R A N C E S

For the Plaintiff:

LUIS VALENTIN, AUSA
MICHELE COLON, AUSA

For the Defendant:

EDGAR SANCHEZ MERCADO, ESQ.

1 (PROCEEDINGS COMMENCED AT 9:59 A.M.)

2

3 DEPUTY CLERK: Criminal Case 22-38, United States

4 of America versus Hansel Janel Rijo-Guerrero. Case is

5 called for sentencing. On behalf of the Government,

6 Assistant U.S. Attorney Luis Angel Valentin and Michele

7 Colon. On behalf of the defendant, court-appointed counsel

8 Edgar Sanchez-Mercado. The defendant is present, and he

9 will be assisted by a certified interpreter.

10 MR. SANCHEZ: Good morning, Your Honor. Edgar

11 Sanchez-Mercado on behalf of Mr. Hansel Janel Rijo-Guerrero.

12 MR. VALENTIN: Good morning, Your Honor. Luis

13 Valentin, Assistant United States Attorney, on behalf of the

14 United States, with my colleague Ms. Michele Colon.

15 THE COURT: Mr. Sanchez, go ahead. Is there

16 anything you would like to say on behalf of Mr. Rijo before

17 I pronounce sentence?

18 MR. SANCHEZ: Yes, Your Honor. In this case, a

19 presentence report was filed. That presentence report, the

20 first one that was filed, it was docket 146. There was a

21 guideline calculation that led up to the mandatory minimum

22 in this case, which would be 120 months. We filed our

23 sentencing memorandum based on that presentence report.

24 However, the Government filed objections, and they filed

25 motions regarding a difference that they had with the

1 presentence report, and an amended presentence report was
2 filed. We filed in docket 157 a supplemental memorandum
3 addressing all of the issues, Judge.

4 Your Honor, in this case we selected the jury, and
5 Mr. Rijo-Guerrero pled out after the selection of the jury,
6 prior to beginning the case. Judge, we saw Government's
7 argument, and we have examined the evidence throughout the
8 case, and we believe that the sentence according to law
9 would be -- a proper sentence would be 120 months.

10 THE COURT: 120?

11 MR. SANCHEZ: The mandatory minimum, Judge.

12 THE COURT: Okay. This is a straight plea?

13 MR. SANCHEZ: This was a straight plea. I could
14 have been asking for less, but we understand that we pled it
15 out for what was charged in the indictment as it is.

16 I think the Government is overrepresenting the
17 role of Mr. Guerrero. This is not the first case with a
18 Dominican national traveling to Puerto Rico. The Court
19 already knows, and I don't think I have to go over again,
20 the financial crisis and situation that these people are
21 facing down there. I believe that Mr. Rijo-Guerrero has the
22 same -- has to be sentenced based on parity with the other
23 co-defendants. Co-defendant Number 2 was sentenced to
24 120 months. Co-defendant Number 1 was sentenced to
25 87 months. And I bring this --

1 THE COURT: Well, did Defendant Number 1 do the
2 valve?

3 MR. SANCHEZ: Yes, he did; however, Defendant
4 Number 1, Judge -- I wanted to bring that. From the
5 presentence report, it says that Defendant Number 1 accepted
6 being the captain of the boat. So --

7 THE COURT: That doesn't matter.

8 MR. SANCHEZ: Well, he is not supposed to qualify
9 for the safety valve; however, the Court is the one that
10 sentenced him to that. So that's why I am looking into
11 parity, and that's why I am going to the 120 months.

12 Mr. Rijo suffered --

13 THE COURT: Assisting in the navigation of the
14 vessel is sufficient to be classified as a captain,
15 notwithstanding whatever anybody else says.

16 MR. SANCHEZ: That's the thing, Judge; he did not
17 assist.

18 THE COURT: Well --

19 MR. SANCHEZ: That's my argument. He did not
20 assist --

21 THE COURT: He was using the GPS, and he was the
22 one who said, "We are 20 miles away."

23 MR. SANCHEZ: Judge, there is no evidence that
24 there was a GPS there. There is no evidence that he threw a
25 GPS. And the co-defendant that stated that is appealing his

1 sentence based on a number of factors, and one of them is
2 that those statements -- and this is --

3 THE COURT: I don't care --

4 MR. SANCHEZ: They were given under duress, Judge.
5 You don't care -- because my client got shot. My client was
6 the one that got shot in the middle of the water, Judge.

7 THE COURT: I know.

8 MR. SANCHEZ: That's the thing. And after that
9 came the post-arrest statement, after my client was shot.
10 So of course my client did not give any post-arrest
11 statement, because he was already taking medical care. But
12 the other defendants, after seeing that, they had -- if
13 that's not duress, Judge, what is that?

14 THE COURT: Well, I don't think it was.

15 MR. SANCHEZ: That is the position --

16 THE COURT: They weren't shot. They didn't jump
17 into the water. They didn't reach into their pocket in what
18 the law enforcement correctly assumed could have been a
19 weapon.

20 MR. SANCHEZ: But it wasn't a weapon.

21 THE COURT: So what?

22 MR. SANCHEZ: There was no weapon.

23 THE COURT: Yeah --

24 MR. SANCHEZ: He was not fleeing, Judge. He was
25 afraid for what would have happened --

1 THE COURT: I am not saying that he was fleeing.

2 MR. SANCHEZ: And it happened, Judge.

3 THE COURT: I am saying that sticking his hand in
4 his pocket after having been told to raise his hands, the
5 law enforcement were correct in believing that he had a
6 weapon.

7 MR. SANCHEZ: And I am not contesting that, Your
8 Honor. What I am saying --

9 THE COURT: That's sufficient.

10 MR. SANCHEZ: Saying that because of that, that he
11 had a GPS, it's not correlated.

12 THE COURT: Okay. All right. Ms. Colon or
13 Mr. Valentin.

14 MS. COLON: Thank you, Your Honor. The Government
15 recommends a sentence of 188 months. That would be the
16 higher end of the guidelines as calculated by the probation
17 officer. And also --

18 THE COURT: Why?

19 MS. COLON: Why, Your Honor? Because as argued in
20 our sentencing memo, we are also requesting this Honorable
21 Court to consider two additional points based on obstruction
22 of justice and recklessly created a substantial risk of
23 death or serious bodily --

24 THE COURT: Obstruction of justice, the fact
25 that -- what you are saying is that because he threw the GPS

1 away, it's obstruction of justice?

2 MS. COLON: Yes, Your Honor.

3 THE COURT: I don't think that was material to --

4 MS. COLON: Your Honor --

5 THE COURT: -- to the case.

6 MS. COLON: The Government contends that this is
7 not the first time this defendant has been to Puerto Rico.

8 And we had an expert witness ready to state under oath that
9 the GPS was a treasure trove of information.

10 THE COURT: Yeah, but that has nothing to do with
11 what was found in this case.

12 MS. COLON: Also, Your Honor, the other point
13 that -- in the alternative, we requested for the recklessly
14 creating a substantial risk of death. The defendant's
15 action put in jeopardy not only his life, but the life of
16 other defendants and the CBP officers. As we know --

17 THE COURT: How did he risk the life of the other
18 defendants?

19 MS. COLON: Well, Your Honor, a shot was made, and
20 it could have hit another defendant.

21 THE COURT: Where were they?

22 MS. COLON: Just in front of him. And actually,
23 Your Honor, what's not contained in the Government's motion
24 is the video. That's a silent witness, and we are ready to
25 present to the Court, if the Court wants to see it, so it

1 would be in the best position to understand what the
2 Government is arguing in the sentencing memorandum.

3 THE COURT: The video of what?

4 MS. COLON: The video of the shooting, Your Honor.

5 THE COURT: You have it with you?

6 MS. COLON: Yes.

7 THE COURT: Let's see it.

8 MS. COLON: Okay. Your Honor, the video is
9 58 minutes long.

10 THE COURT: How long?

11 MS. COLON: 58, but I have it marked since the
12 beginning of the intervention for your viewing. If that's
13 all right, then I will play it from minute 46 onward. That
14 is the intervention.

15 THE COURT: Okay.

16 (WHEREUPON, the video was played.)

17 MR. SANCHEZ: There, he was shot.

18 THE COURT: Go back a little bit. Stop it.

19 (WHEREUPON, the video was paused.)

20 MS. COLON: Yes.

21 THE COURT: Go back to the -- where the shot was
22 fired, and stop it.

23 (WHEREUPON, the video was played.)

24 MS. COLON: When the shot was fired. At this
25 point the defendant is in the water. He is getting in. As

1 you can see, the two defendants are complying and raising
2 their hand just in front of the defendant as he is getting
3 in the boat. CBP officers spent --

4 THE COURT: Where did he put his hands in his
5 pocket?

6 (WHEREUPON, the video was paused.)

7 MS. COLON: Right now. I stopped the video, Your
8 Honor. It's 47:17, and he just got into the boat, and he
9 put his hand in his pocket, his right pocket.

10 THE COURT: He was already out of the water.

11 Okay. All right. Okay. He was told to raise his hands,
12 but --

13 MS. COLON: 20 seconds long the CBP officers
14 commanded him to raise his hands.

15 THE COURT: But he was already in the -- back in
16 the vessel?

17 MS. COLON: Yes.

18 THE COURT: Okay. All right. Anything else,
19 Ms. Colon?

20 MS. COLON: Your Honor, although the GPS was not
21 recovered in this case, the United States has an interest in
22 apprehending all particulars at the point of origin to
23 eradicate sources of supply and exhaust the pandemic of
24 drugs entering into Puerto Rico. It also shows -- that
25 information, data from GPS also shows routes that they take

1 to avoid law enforcement. So for all these reasons, Your
2 Honor, the Government recommends 188 months.

3 THE COURT: Okay. Thank you.

4 MR. SANCHEZ: Judge, if you see the video -- and I
5 know you know your --

6 THE COURT: Let's mark the video as Government's
7 exhibit to the sentencing hearing.

8 DEPUTY CLERK: Yes, Judge.

9 THE COURT: Okay. Go ahead, Mr. Sanchez.

10 MR. SANCHEZ: Yes, Judge. The other two
11 defendants were in the other side of the boat. Of course,
12 it is not a big boat, however, that's a pointblank shot from
13 the CBP officer to Mr. Rijo-Guerrero. The other two
14 individuals are not near where Juan Padilla, who was the
15 agent that shot, was present. So no risk for the other two
16 defendants were there.

17 And from the video, we cannot see what he was --
18 if he was taking something out of his pocket or if -- he
19 just came out of the water. He may have been holding his
20 pants, for all that we know, that we see from there. And
21 saying that he had a GPS on him at that moment would be
22 speculation because nothing from the statements of the
23 officers that were there state that there was a GPS or he
24 was taking a gun or he was taking a GPS at that moment.

25 And the video shows by itself, Judge. That's the

1 same video that would have been presented at trial if we
2 were. Here, the thing is, Judge, that my client is being
3 penalized because he, at some point in time, chose to go to
4 trial because he wasn't sure on what decision to make, and
5 then afterwards, he pled out when we decided. And now they
6 are trying to overrepresent the participation of my client,
7 Judge. That's the position. And we have -- the memorandum
8 has stated that to the detail in that matter, Judge. That
9 at that time he put at risk other people, I don't believe
10 so, Judge.

11 MR. VALENTIN: May I briefly respond?

12 THE COURT: Of course.

13 MR. VALENTIN: This is with the utmost of respect
14 to Counsel, but we can't sit silently. It's very
15 disingenuous to claim things that that video does not show.
16 What it clearly shows -- and Counsel has had this video for
17 his review and his client's review for a significant period
18 of time. And let me add this component to the equation:
19 They have a slow version of this which was marked as an
20 exhibit that was going to be introduced at trial.

21 That exhibit clearly shows this man at the rear of
22 the yola, right before the intervention, in essence,
23 navigating the yola at that point. Throughout the course of
24 this long trip, he was -- and the inferences, all reasonable
25 inferences; these are not illogical leaps -- he was in

1 possession of an object believed from all of the evidence to
2 be a GPS device, because it is highly improbable for this
3 crew, any crew, to travel from the Dominican Republic to our
4 shores without that device. That device is a treasure
5 trove. His intentional destruction of that device was aimed
6 at thwarting law enforcement's efforts of identifying the
7 exact coordinates, where he was going to land, who his
8 receiving crew was, and where in Puerto Rico he was then
9 going to go to the safe house.

10 And let me talk about that for a moment. That's
11 critical in this case because we know that Hansel
12 Rijo-Guerrero was not new in Puerto Rico. He had traveled
13 to Puerto Rico earlier, at an earlier point in time. And if
14 his claims of wanting to seek a better future for his family
15 are true, then why leave our beautiful Puerto Rico and
16 return back to the Dominican Republic? And I suggest to the
17 Court that the only reason for that is so that he can
18 prepare for this trip.

19 Now, having said all of that, the video shows two
20 critical things: Number one, this defendant's continuous
21 refusal to take his hands out of his pocket, creating a
22 great threat to those enforcement officers and the fellow
23 crew members and, as such, lawful force was necessitated by
24 this defendant's actions.

25 Now, what you see on that video in the close-up

1 clip is, once he is shot on the left shoulder, you see a
2 splash of water coming off his body because he recently
3 re-entered the boat. What you then see is an object clearly
4 splashing to the right side, an object that at most is a GPS
5 device, at worst is the gun that the officers feared. But
6 when you consider the totality of the circumstances, it is,
7 in fact, a GPS device. He knows it and, quite frankly, here
8 is what I will leave it at: It cuts against his, quote,
9 last-ditch, sincere effort to plead guilty before this Court
10 when we were trying this case.

11 He is not being punished because he went to trial.
12 He is being appropriately sentenced by this Court for the
13 gravity of what he did, which is completely different than
14 what the other two individuals on that yola did. And
15 fortuitously for Hansel Guerrero, he had the benefit of
16 those law enforcement officers administer and render
17 appropriate care to salvage his life, the life that he so
18 risked callously, dangerously on that yola trip.

19 So we take great deference to the facts as they
20 are being portrayed on this video. It's quite deceiving and
21 disingenuous to suggest that that video doesn't show exactly
22 what it shows, because there's been plenty of discussion
23 about it. There's been plenty of conversation among Counsel
24 for both sides regarding the introduction of these exhibits
25 as evidence. And lastly, let's not forget the Government's

1 submission to this Court for expert testimony that laid out
2 all of these important links and factors for this Court's
3 consideration, which, most respectfully, would have been
4 admitted. There is no reason to deny that type of
5 testimony, and certainly not at this point. We are making a
6 good-faith proffer consistent with that expert testimony
7 submission.

8 So for the totality of circumstances, at a
9 minimum, the 188-month sentence suggested and recommended by
10 the Government is not -- certainly, it's not abusive. It's
11 not unmerited. It's wholly appropriate. Thank you.

12 MR. SANCHEZ: Judge, it is not disingenuous. We
13 had conversation regarding this, but they cannot say that I
14 said that that was a GPS. They cannot say that Defense
15 Counsel said that that -- we cannot say that he was the
16 captain of the boat. Now the Government is saying that he
17 was navigating the boat because he was in the back, near to
18 the engine, when we already have a captain in this case,
19 Judge. He was in the back of the boat because he just came
20 out of the water.

21 I believe that 120 months would be a proper
22 sentence, taking into consideration all of the circumstances
23 and the nature of these types of cases, Judge.

24 THE COURT: Mr. Rijo, is there anything you would
25 like to say?

1 THE DEFENDANT: No.

2 THE COURT: Okay. On October 24, 2022, Defendant
3 Hansel Janel Rijo-Guerrero pled guilty to Counts One through
4 Four of the indictment in Criminal Case Number 22-38, which
5 charges him with violating Title 21, United States Code
6 Sections 952(a), 960(a)(1), 960(b)(1)(B)(ii), and 963,
7 conspiracy to import cocaine into the United States, which
8 is a Class A felony; also, pursuant to Title 21, United
9 States Code Section 952(a), 960(a)(1), 960(b)(1)(B)(ii), and
10 18 U.S. Code Section 2, importing cocaine into the United
11 States, which is also a Class A felony; in addition,
12 violation of Title 21, United States Code Section 841(a)(1),
13 841(b)(1)(B)(ii), and 846, conspiracy to possess with intent
14 to distribute controlled substances, which is a Class B
15 felony; and lastly, Title 21, United States Code
16 Section 841(a)(1), 841(b)(1)(A)(ii), and 18 United States
17 Code Section 2, possessing with intent to distribute
18 cocaine, which is a Class A felony.

19 The November 1, 2021, edition of the Sentencing
20 Guidelines Manual has been used to calculate the guideline
21 adjustments pursuant to the provisions of Guideline
22 Section 1B1.11(a). Counts One, Two, Three, and Four are
23 grouped together for guideline calculation purposes because
24 the offense level is determined in this case on the quantity
25 of the substance involved pursuant to Sentencing Guideline

1 Section 3D1.2(d) and 3D1.3(b).

2 Based on the provisions of Guideline Sections
3 2D1.1(a)(5) and 2D1.1(c)(3), a base offense level of 34 has
4 been determined because Mr. Rijo has been convicted of
5 conspiring to import into the United States 58 kilograms of
6 cocaine.

7 Because Mr. Rijo acted as a navigator or an
8 operational officer aboard the vessel carrying a controlled
9 substance, the base offense level is increased by two levels
10 pursuant to Guideline Section 2D1.1(b)(3)(C).

11 Because Mr. Rijo has accepted responsibility for
12 his offense, however, his offense level is reduced by two
13 levels pursuant to Guideline Section 3E1.1(a). There are no
14 other applicable guideline adjustments. His total offense
15 level is 34.

16 Based on a total offense level of 34 and a
17 Criminal History Category of I, the guideline imprisonment
18 range for Mr. Rijo's offenses is from 151 to 188 months.
19 There is a fine range of 35,000 to \$10 million, plus a
20 supervised release term of at least five years as to
21 Counts One, Two, and Four, and at least four years as to
22 Count Three.

23 The probation officer has correctly adjusted the
24 guideline computations, and the presentence investigation
25 report satisfactorily reflects the components of Mr. Rijo's'

1 offenses by considering their nature and circumstances. The
2 Court has also considered the other sentencing factors set
3 forth in Title 18, United States Code Section 3553(a), the
4 presentence investigation report, the objections to the
5 presentence investigation report, the probation officer's
6 response to the objections, the sentencing memorandum filed
7 on behalf of Mr. Rijo, the video shown today concerning this
8 case, arguments by Counsel and the prosecutor, and Mr. Rijo
9 having decided not to allocute.

10 Mr. Rijo is a 28-year-old citizen of the Dominican
11 Republic, who has a 6th grade education. He was unemployed
12 prior to his arrest for his offenses, and has no history of
13 using controlled substances.

14 Mr. Rijo assisted in the navigation of the vessel
15 by using a Global Positioning System, GPS. The co-defendant
16 told the agents that he overheard Mr. Rijo tell Defendant
17 Cordero, "Estamos a veinte"; "We are 20 away."

18 Disregarding comments by law enforcement, Mr. Rijo
19 jumped in the water, returned to the vessel, and then
20 reached into his pocket, and threw away what was eventually
21 determined to be a GPS device. Remember that Mr. Rijo said
22 that they were 20 miles away, from which you can infer that
23 the item that he had in his pocket was a GPS device.

24 The officers correctly thought that Mr. Rijo was
25 reaching for a weapon, so they shot him to stop the apparent

1 threat to them.

2 Today Mr. Rijo has requested a sentence of
3 120 months. The Government has requested a sentence of
4 188 months. The Court finds that the sentence recommended
5 by the Government reflects the seriousness of the offense,
6 promotes respect for the law, protects the public from
7 additional crimes by Mr. Rijo, and addresses the issues of
8 deterrence and punishment.

9 Accordingly, it's the judgment of the Court that
10 Hansel Janel Rijo-Guerrero is committed to the custody of
11 the United States Bureau of Prisons to be imprisoned for a
12 term of 188 months for each count, to be served concurrently
13 with each other.

14 Upon release from confinement, Mr. Rijo shall be
15 placed on supervised release for a term of five years as to
16 all four counts, to be served concurrently with each other,
17 under the following terms and conditions:

18 He shall observe the standard conditions of
19 supervised release recommended by the United States
20 Sentencing Commission and adopted by this Court.

21 He shall not possess controlled substances
22 unlawfully.

23 He shall not possess firearms, destructive
24 devices, or other dangerous weapons.

25 If ordered deported from the United States,

1 Mr. Rijo must remain outside the United States unless
2 legally authorized to re-enter the United States. If he
3 re-enters the United States, he must report to the nearest
4 probation office within 72 hours after his return.

5 He shall cooperate in the collection of a DNA
6 sample as directed by the probation officer pursuant to the
7 revised DNA collection requirements and Title 18, United
8 States Code Section 3563(a)(9).

9 He shall submit himself and his property, house,
10 residence, vehicles, papers and effects, computers, and
11 other electronic communication or data storage devices or
12 medium to a search at anytime, with or without a warrant, by
13 the probation officer and, if necessary, with the assistance
14 of any other law enforcement officer, but only in the lawful
15 discharge of the supervision functions of the probation
16 officer, who must have a reasonable suspicion of unlawful
17 conduct or of a violation of a condition of supervised
18 release. The probation officer may seize any electronic
19 communication or electronic device or medium which will be
20 subject to additional forensic investigation or analysis.
21 Failure to submit to a search or permit a seizure may be
22 grounds for revocation of supervised release. Mr. Rijo
23 shall warn any other resident or occupant that his premises
24 and residence may be subject to searches pursuant to this
25 condition.

1 Having considered Mr. Rijo's financial condition,
2 a fine is not imposed. A special monetary assessment in the
3 amount of \$100 is imposed for each count, however, as
4 required by law, for a total of \$400.

5 Mr. Rijo, you have a right to appeal your
6 conviction and sentence. Any notice of appeal must be filed
7 in this court within 14 days from when the judgment is
8 entered. You have a right to apply for leave to appeal as
9 an indigent if you are unable to pay the cost of an appeal.
10 Because you are assisted by court-appointed counsel, he will
11 continue to represent you through any appeal unless a
12 substitute counsel is later appointed.

13 Any particular institution you would like me to
14 recommend?

15 MR. SANCHEZ: Judge, I believe that in the area of
16 Florida, which they give the courses in Spanish, it would be
17 easier for him.

18 We have a couple of requests, Your Honor, and one
19 of them is, of course, vocational courses; English as a
20 second language so he can go forward with that possibility
21 of a GED at the moment, Judge. Those are one of the
22 requests.

23 And Judge, for the record, we would like to state
24 two objections, Judge, if it is the time, or we can do it --

25 THE COURT: What do you want to object to?

1 MR. SANCHEZ: Judge, we still believe that that
2 enhancement under 2D1.1(b) (3) (C), we believe that based on
3 the information that we have and upon the soon-to-be-filed
4 appeal for Mr. Perez-Segura, the use of those statements for
5 establishing that my client --

6 THE COURT: Appeal for whom?

7 MR. SANCHEZ: Anlert Perez-Segura, Defendant
8 Number 2 in this case. It is what we stated in our
9 sentencing memorandum. We believe that using that statement
10 that will be or may be challenged by the co-defendant should
11 not be used to try to portray Mr. Rijo as a leader, Judge.
12 And I would like to state it for the record.

13 Also, Judge, even though --

14 THE COURT: He wasn't a leader.

15 MR. SANCHEZ: Well, the navigator, captain, some
16 type of participant.

19 MR. SANCHEZ: The other thing, Your Honor; we were
20 looking at the guideline calculation. Even though the
21 timeliness, the subtraction of one point for timeliness has
22 not been applied and may be a petition that the Government
23 may feel that it's not appropriate to do, Mr. Rijo-Guerrero
24 did not go forward with the trial. That saved plenty of
25 time to the Court, to the Government, to the Defense, and I

1 believe that he may -- court time and expenses that may
2 arise from that. And I believe that even though that point
3 was not subtracted in the PSR, I believe that may be
4 applied, and then we would have a guideline of 33, Your
5 Honor. Those are the two objections we have for the record.

6 THE COURT: Your objections are noted.

7 MR. SANCHEZ: Thank you, Your Honor. We believe
8 that will be all on our behalf.

9 THE COURT: And I will recommend that Mr. Rijo be
10 designated to an institution in Florida, either Coleman or
11 Miami, that he take courses leading to a high school
12 diploma, that he participate in any vocational training at
13 the institution to which he may be designated, and that he
14 take courses in English as a second language.

15 Anything else?

16 MS. COLON: Not from the Government, Your Honor.

17 MR. SANCHEZ: Nothing further.

18 THE COURT: You are excused.

19 (PROCEEDINGS ADJOURNED AT 10:33 A.M.)

20

21

22

23

24

25

1 UNITED STATES DISTRICT COURT)
2 OF PUERTO RICO) ss.

3

REPORTER'S CERTIFICATE

6

8 I, LISA O'BRIEN, do hereby certify that the above
9 and foregoing, consisting of the preceding 22 pages,
10 constitutes a true and accurate transcript of my
11 stenographic notes and is a true and complete transcript of
12 the proceedings to the best of my ability.

14

Dated this 5th day of July, 2023.

15

S/Lisa O'Brien
Lisa O'Brien
USDC Court Reporter
708-284-0021

17
18
19
20
21
22
23
24
25