

# United States Court of Appeals For the First Circuit

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No. 23-1174

UNITED STATES,

Appellee,

v.

HANSEL JANEL RIJO-GUERRERO,

Defendant - Appellant.

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Before

Montecalvo, Kayatta and Rikelman,  
Circuit Judges.

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## 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 overheard Defendant-Appellant tell the captain "estamos a veinte" (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 &amp; 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) (ii), and 963	Conspiracy to import cocaine.	1/24/2022	One (1)
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 &amp; 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](http://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.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$ 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>
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<b>TOTALS</b>	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ 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  
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## SCHEDULE OF PAYMENTS

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

- A** ☒ Lump sum payment of \$ 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
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- ☐ 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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No: 22-038-FAB  
 )  
 HANSEL JANEL RIJO GUERRERO, )  
 )  
 Defendant. )

TRANSCRIPT OF SENTENCING HEARING  
HELD BEFORE  
THE HONORABLE JUDGE FRANCISCO A. BESOSA  
Wednesday, February 8, 2023

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. Rijos'

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.

17          THE COURT: That's enough pursuant to the  
18          guidelines.

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 ) ss.  
3 OF PUERTO RICO )  
4

5 **REPORTER'S CERTIFICATE**  
6  
7

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.

13 Dated this 5th day of July, 2023.  
14

15 S/Lisa O'Brien  
16 Lisa O'Brien  
17 USDC Court Reporter  
18 708-284-0021  
19  
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