

No. 22A-\_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ELADIO PADILLA,

*Petitioner-Applicant,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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ON APPLICATION FOR A CERTIFICATE OF APPEALABILITY  
THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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**PETITIONER'S APPENDIX IN SUPPORT OF HIS APPLICATION  
FOR A CERTIFICATE OF APPEALABILITY**

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S.D.N.Y.—N.Y.C.  
97-cr-809  
16-cv-3622  
Chin, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1<sup>st</sup> day of March, two thousand twenty-two.

Present:

John M. Walker, Jr.,  
Michael H. Park,  
Myrna Pérez,  
*Circuit Judges.*

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Eladio Padilla,

*Petitioner-Appellant,*

v.

21-978

United States of America,

*Respondent-Appellee.*

---

Appellant moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has not “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see also *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

FOR THE COURT:  
Catherine O’Hagan Wolfe, Clerk of Court

A circular seal of the United States Court of Appeals for the Second Circuit is overlaid on the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

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

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18<sup>th</sup> day of May, two thousand twenty-two.

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Eladio Padilla,

Petitioner,

v.

United States of America,

Respondent.

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**ORDER**


Docket No: 21-978

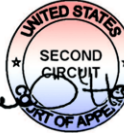
Petitioner, Eladio Padilla, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

  
Catherine O'Hagan Wolfe



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

ELADIO PADILLA, : **DECLARATION**

*Petitioner-Appellant,* :

v. : No. 21-978-pr

UNITED STATES OF AMERICA, :

*Respondent-Appellee.* :

-----X

Edward S. Zas, an attorney duly admitted, declares under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a supervising attorney with the Federal Defenders of New York, Inc., Appeals Bureau, counsel to Petitioner-Appellant Eladio Padilla. I make this declaration to place before this Court six documents relevant to Mr. Padilla’s motion for a certificate of appealability or, alternatively, an order holding this appeal in abeyance.

2. **Exhibit “A”** is a true and correct copy of the district court’s memorandum decision and order, entered on March 24, 2021, denying Petitioner’s amended motion under 28 U.S.C. § 2255

to vacate his conviction and sentence for violating 18 U.S.C.  
§ 924(c).

3. **Exhibit “B”** is a true and correct copy of Superseding Indictment No. S3 97 Cr. 809 (DC), filed in the district court on March 4, 1998.

4. **Exhibit “C”** is a true and correct copy of the plea agreement between Petitioner and the government, dated April 24, 2000.

5. **Exhibit “D”** is a true and correct copy of the transcript of Petitioner’s guilty plea, dated April 24, 2000.

6. **Exhibit “E”** is a true and correct copy of Petitioner’s sentencing, dated August 17, 2000.

7. **Exhibit “F”** is a true and correct copy of Petitioner’s judgment of conviction, dated August 24, 2000.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 27, 2021

\_\_\_\_\_  
/s/  
Edward S. Zas

# EXHIBIT A



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

**MEMORANDUM DECISION**

- v - :

16 Civ. 3622 (DC)

ELADIO PADILLA, :

97 Cr. 809 (DC)

Defendant. :

-----x

**APPEARANCES:**

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Federal Defenders of New York, Inc.

By: Edward S. Zas

Assistant Federal Defender

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**CHIN, Circuit Judge**

On April 24, 2000, defendant Eladio Padilla pled guilty to five counts of racketeering. On August 17, 2000, I sentenced him principally to forty-five years' imprisonment. Now, through counsel, Padilla moves pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence, alleging his conviction and sentence are unconstitutional after the Supreme Court's holding in United States v. Davis, 139 S. Ct.

2319 (2019), and the Second Circuit's decision in United States v. Barrett, 937 F.3d 126, 127 (2d Cir. 2019) (hereinafter "Barrett II"). (See Dkt. 97 Cr. 807, No. 123). For the reasons set forth below, his motion is **DENIED**.

## **BACKGROUND**

### **A. Indictment, Plea, and Sentence**

Padilla and three co-defendants were indicted on March 4, 1998. (See Dkt. No. 126 at 1-2). Padilla was charged with twenty counts, including:

- (1) engaging in a racketeering enterprise, in violation of 18 U.S.C. § 1962(c) (Count One);
- (2) participating in a conspiracy to murder Juan Rios, a/k/a/ "Amarito," in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(5) (Count Three);
- (3) participating in a conspiracy to murder Juan Rios, a/k/a/ "Chato," in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(5) (Count Five);
- (4) attempting to murder Joseph Grajales, a/k/a "Macho," in aid of racketeering, and in aid and abetting the same, in violation of 18 U.S.C. §§ 1959(a)(5) and (2) (Count Ten);
- (5) participating in a conspiracy to murder John Santos, a/k/a "Teardrop," in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(5) (Count Eleven);
- (6) murdering John Santos, a/k/a "Teardrop," in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(1) and (2) (Count Twelve); and
- (7) using and carrying a firearm during and in relation to the conspiracy to murder and murder of John Santos, a/k/a

"Teardrop," as charged in Act Five of Count One, in violation of 18 U.S.C. § 924(c) and (2) (Count Eighteen).

(See Dkt. No. 123, Ex. A ("Indictment") ¶¶ 1-41; Dkt. No. 126 at 2). Count One alleged six racketeering acts, including conspiracy to murder, attempted murder, and murder. (See Indictment ¶¶ 7-8, 10-11; see also Dkt. No. 126 at 2-3). Racketeering Acts One through Six of Count One were realleged and incorporated by reference in Counts Five, Ten, and Eleven. (See Indictment ¶¶ 1-4, 7-12, 20-21, 30-33; see also Dkt. No. 126 at 2-3). Racketeering Act Five of Count One, referenced in Count Eighteen, alleges both the "[c]onspiracy to Murder John Santos" and the "[m]urder of John Santos." (Indictment ¶ 11a).<sup>1</sup>

On April 24, 2000, Padilla pled guilty before Magistrate Judge Frank Maas to Counts Three, Five, Ten, Eleven, and Eighteen, listed above. (Dkt. No. 123 at 2; Dkt. No. 126 at 3). See Padilla v. United States, No. 97 Cr. 809 (DC), 2003 WL 1948799, at \*1 (S.D.N.Y. Apr. 24, 2003). The language in the Indictment differs slightly from the language in the Plea Agreement regarding Count Eighteen. (See Dkt. No. 126 at 3). The Indictment alleged that Padilla "used and carried a firearm during and in relation to a crime of violence . . . to wit, the conspiracy to murder and murder of John Santos, a/k/a "Teardrop," as charged in Racketeering Act Five of Count One of the Indictment." (Indictment ¶ 41 (emphasis added); Dkt. No. 126 at 3). The Plea Agreement, however,

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<sup>1</sup> Both subparagraphs of Paragraph 11 of the Indictment are labeled "a." but that appears to be an error. (See Indictment, Dkt. No. 123, Ex. A ¶ 11).

stated only that "Count Eighteen charges the defendant with the use of a firearm during a crime of violence, namely, the conspiracy to murder John Santos . . . as charged in Count Eleven." (Dkt. No. 123, Ex. B; see also Dkt. No. 126 at 3).

On August 17, 2000, I sentenced Padilla principally to a term of ten years' imprisonment on each of Counts Three, Five, Ten, and Eleven, to be served consecutively. (Dkt. No. 123, Ex. E; see also Dkt. No. 126 at 6). For Count Eighteen, I sentenced Padilla to the mandatory five-year consecutive sentence. (Id.).

**B. Direct Appeal and Post-Appeal Motions**

Padilla appealed his conviction and sentence to the Second Circuit, which affirmed on July 11, 2001. (See Dkt. No. 126 at 6; Dkt. No. 123 at 4). See United States v. Villanueva, 14 F. App'x 84 (2d Cir. July 11, 2001). On July 29, 2002, Padilla, proceeding pro se, filed a motion pursuant to 28 U.S.C. § 2255, challenging his conviction and sentence. (Dkt. No. 123 at 5; Dkt. No. 126 at 6). I denied his motion, finding Padilla's ineffective assistance of counsel claims both without merit and barred by the appeal waiver he agreed to as part of the Plea Agreement. See United States v. Padilla, 2003 WL 1948799 (S.D.N.Y. Apr. 24, 2003). Padilla appealed to the Second Circuit, which dismissed the appeal on November 23, 2004. (Dkt. No. 126 at 6; Dkt. No. 87). On December 1, 2006, Padilla moved pursuant to 18 U.S.C. § 3582(c)(2), arguing that his federal sentence should have been imposed concurrently with his state sentence. (Dkt.

No. 94; Dkt. No. 126 at 6; Dkt. No. 92). I denied his motion without granting leave to appeal. (Dkt. No. 94 ; Dkt. No. 126 at 6).

On June 26, 2015, the Supreme Court decided Johnson v. United States, 135 S. Ct. 2551 (2015), holding that the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 922(g) (the "ACCA"), is unconstitutionally vague. The residual clause of the ACCA is almost identical to that of 18 U.S.C. § 924(c), upon which Padilla's Count Eighteen conviction was based, at least in part.<sup>2</sup> On June 13, 2016, within one year of Johnson, Padilla sought leave from the Second Circuit to file a second or successive § 2255 motion. (Dkt. No. 126 at 6); Padilla v. United States, 2d Cir. No. 16-1871. The Supreme Court then decided Davis, holding, based on Johnson and several textualist arguments, that the residual clause of 18 U.S.C. § 924(c) was unconstitutionally vague. Davis, 139 S. Ct. 2319. On August 30, 2019, on remand from the Supreme Court, the Second Circuit held that conspiracy to commit Hobbs Act robbery was not a crime of violence under § 924(c). See Barrett II, 937 F.3d at 127. On January 28, 2020, the Second Circuit granted Padilla leave to file a § 2255 motion challenging his § 924(c) conviction under the Supreme Court's decision in Davis. (Dkt. No. 126 at 6-7; Dkt. No. 115).

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<sup>2</sup> The ACCA defined a "violent felony" as an offense that presented a "serious potential risk of physical injury to another." § 924(e)(2)(B)(ii). Section 924(b)(3)(B) defined a "crime of violence" as a felony "that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." § 924(c)(3)(B).

**C. The Instant Motion**

On June 1, 2020, Padilla filed this amended motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. (Dkt. No. 126 at 7; Dkt. No. 123). His motion alleges that his conviction and sentence are unconstitutional after the Supreme Court's holding in Davis and the Second Circuit's holding in Barrett II. The government filed its response on July 29, 2020. Padilla submitted a reply on September 28, 2020.

**DISCUSSION**

Padilla's motion is denied. First, his claim is procedurally barred. Second, his argument fails on the merits.

**A. Procedural Bar**

Padilla is procedurally barred from arguing that his § 924(c) conviction is unconstitutional because he cannot show actual prejudice.

**1. Applicable Law**

A person in federal custody may move to vacate, set aside, or correct his sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). Generally, "claims not raised on direct appeal may not be raised on collateral review unless the petitioner shows cause and prejudice." Massaro v. United States, 538 U.S. 500, 504 (2003) (citing United States v. Frady, 456 U.S. 152, 167-68 (1982)).

To show cause, "a defendant must show some objective factor external to the defense such that the claim was so novel that its legal basis [was] not reasonably available to counsel" at the time of the appeal. Gupta v. United States, 913 F.3d 81, 84 (2d Cir. Jan. 11, 2019) (internal quotations and citations omitted).

To show prejudice, a defendant must establish that the errors of which he complains "worked to his actual and substantial disadvantage," not merely that they created a possibility of prejudice. Fraday, 456 U.S. at 170 (emphasis in original). Specifically, the defendant must show a "reasonable probability that, but for the error, he would not have pleaded guilty." United States v. Dussard, 967 F.3d 149, 156 (2d Cir. 2020). When analyzing prejudice, the court may consider the record as a whole, including the Indictment, Plea Agreement, plea colloquy and sentencing proceeding. Id.

## **2. Application**

As Davis and Barrett II were decided well after his conviction, Padilla did not raise this challenge during the original proceedings. He thus shows cause for not raising the issue, but he fails to show actual prejudice.

### **a. Cause**

Padilla undoubtedly satisfies the cause prong. Section 924(c) of Title 18 criminalizes the use or carrying of a firearm during a "crime of violence." 18 U.S.C. § 924(c)(1)(A). The statute defines a "crime of violence" as a felony that either:

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

18 U.S.C. § 924(c)(3). Subsection (A) is known as the "elements clause" and subsection (B) is known as the "residual clause." The Supreme Court made clear in Davis that the residual clause of 18 U.S.C. § 924(c)(3) is unconstitutionally vague. Davis, 139 S. Ct. at 2324. Further, after Barrett II, conspiracy to commit Hobbs Act robbery is not a crime of violence sufficient to support a conviction under § 924(c). Accordingly, a predicate offense is a "crime of violence" only if it qualifies under the elements clause.

In 2000, Padilla pled guilty and was sentenced under 18 U.S.C. § 924(c). At that time, it was well settled in the Second Circuit that conspiracy qualified as a predicate offense to support a § 924(c) conviction, under the residual clause of the statute. See, e.g., United States v. Barrett, 903 F.3d 166, 175 (2d Cir. 2018) ("[I]t has long been the law in this circuit that a conspiracy to commit a crime of violence is itself a crime of violence under 18 U.S.C. § 924(c)(3).") (hereinafter Barrett I), abrogated by Davis, 139 S. Ct. at 2323-24. The Government nonetheless argues that the § 924(c)(3)(B) void-for-vagueness argument should have been argued at the time of Padilla's direct



appeal in 2001. (Dkt. No. 126 at 17). This argument is both unpersuasive and contrary to Second Circuit case law.<sup>3</sup>

Here, like in Camacho v. United States, "Second Circuit caselaw at the time of Petitioner's direct appeal foreclosed his § 924(c) argument, and the Supreme Court did not take up or decide Johnson until after Petitioner had filed his direct appeal." Camacho v. United States, 17 Civ. 5199 (AKH), 2019 WL 3838395 at \*2 (S.D.N.Y. Aug. 15, 2019). In fact, the Second Circuit continued to uphold the constitutionality of § 924(c)'s residual clause even after Johnson. See Camacho, 2019 WL 3838395 at \*2 n.2 (citing Barrett I, 903 F.3d at 175). Had Padilla raised this argument at the time of his appeal, it would have been promptly rejected. Accordingly, it was not "reasonably available" to Padilla at the time of his appeal in 2001. See Gupta, 914 F.3d at 84.

The Supreme Court's decision in Davis is an objective external factor sufficient to establish cause for Padilla's failure to raise the residual clause argument on direct appeal. Accordingly, Padilla has shown cause.

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<sup>3</sup> The circuit courts are generally in agreement that "no one -- the government, the judge, or the appellant -- could reasonably have anticipated Johnson." United States v. Redrick, 841 F.3d 478, 480 (D.C. Cir. Nov. 8, 2016); see also Lassend v. United States, 898 F.3d 115, 122-23 (1st Cir. Aug. 2, 2018); Cross v. United States, 892 F.3d 288, 295-96 (7th Cir. June 7, 2018); Ezell v. United States, 743 F. App'x 784, 785 (9th Cir. July 30, 2018); United States v. Snyder, 871 F.3d 1122, 1127 (10th Cir. Sept. 21, 2017); Rose v. United States, 738 F. App'x 617, 628 (11th Cir. June 6, 2018).

**b. Prejudice**

Padilla argues that he satisfies the prejudice prong "because there is at least a 'reasonable probability' that, but for the unconstitutional residual clause, he would not have pleaded guilty to the § 924(c) count." (Dkt. No. 123 at 9). Padilla cannot show actual prejudice because a § 924(c) conviction does not require a conviction of the predicate offense "so long as there is legally sufficient proof that the predicate crime was, in fact, committed." Johnson v. United States, 779 F.3d 125, 129 (2d Cir. 2015). Such proof exists here.

After Davis, a predicate crime under § 924(c) is a felony that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A). Murder in aid of racketeering is a crime that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. See N.Y. Penal Law § 125.25 ; 18 U.S.C. § 1959(a)(1).<sup>4</sup> Padilla explained several times, on the record, that he had, in fact, murdered John Santos:

COURT: Moving on to Count 11, which charges you with conspiring with others to murder John Santos, also known as Teardrop, can you tell me what you did that makes you guilty of that crime?

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<sup>4</sup> While the Second Circuit has not issued a precedential opinion on this point, it has issued several summary orders. See, e.g., United States v. Sierra, 782 F. App'x 16, 20 (2d Cir. 2019); United States v. Herron, 762 F. App'x 25, 33 (2d Cir. 2019); United States v. Scott, 681 F. App'x 89, 95 (2d Cir. 2017); United States v. Praddy, 729 F. App'x 21, 24 (2d Cir. 2018).

PADILLA: Me and others conspired to kill Teardrop. I actually pulled the trigger.

COURT: Did you say "I actually pulled the trigger?"

PADILLA: Yes.

(Dkt. No. 126 at 5; Dkt. No. 123, Ex. C at 21-22). Padilla elaborated later in the same proceeding:

COURT: Finally, Count 18 charges that during the crime charged in Count 11 you used a firearm. You told me that you shot John Santos, is that right?

PADILLA: Yes.

COURT: Was he in fact killed?

PADILLA: Yes.

COURT: What type of weapon did you use?

PADILLA: I can't recall.

COURT: Was it a handgun?

PADILLA: Yes, it was a handgun, yes.

(Dkt. No. 126 at 4-5; Dkt. No. 123, Ex. C at 22-23). I find that there is legally sufficient evidence to show that Padilla, in fact, committed murder in aid of racketeering. The murder of John Santos may thus serve as the predicate offense for the § 924(c) conviction; while Padilla did not plead guilty to the crime, he admitted shooting and killing Santos. This analysis does not change, even though the language in the

Indictment differs from the language in the Plea Agreement. Consequently, Padilla is unable to show actual prejudice.

**B. Merits**

Even assuming Padilla is not procedurally barred, his argument fails on the merits. Padilla argues that his § 924(c) conviction for unlawful use of a firearm should be vacated because (1) language in the Plea Agreement takes precedence over the language in the Indictment and thus conspiracy was the sole predicate offense justifying his § 924(c) conviction; and (2) conspiracy is not a crime of violence sufficient to support a § 924(c) conviction, and thus his conviction must be vacated. For the reasons set forth below, these arguments fail.

**1. Applicable Law**

As noted above, § 924(c) "does not require the defendant to be convicted of (or even charged with) the predicate crime, so long as there is legally sufficient proof that the predicate crime was, in fact, committed." Johnson, 779 F.3d at 129-30; see also Dussard, 967 F.3d at 156.

**2. Application**

Padilla is correct that conspiracy no longer serves as a predicate offense for his § 924(c) conviction. This development, however, does not justify vacating his conviction and sentence for Count Eighteen. First, Padilla's Count Eighteen conviction contains a dual predicate: "the conspiracy to murder and murder of John Santos."

Indictment ¶ 41 (emphasis added). Second, even assuming the Plea Agreement somehow amended the Indictment, there is legally sufficient proof in the record to show that Padilla in fact committed murder, a predicate offense under § 924(c)(3)(A).

Count Eighteen charges Padilla with using a firearm in relation to a crime of violence "as charged in Racketeering Act Five of Count One of this Indictment." As noted above, Act Five of Count One alleges both the "[c]onspiracy to Murder John Santos," Ex. A ¶ 11a, and the "murder of John Santos." Ex. A ¶ 11a. Both the Plea Agreement and the plea colloquy specifically reference the Indictment. Indeed, Padilla described in his own words how he did, in fact, murder John Santos. Thus, there is legally sufficient evidence to show that Padilla committed murder, a predicate offense sufficient to support a § 924(c) charge under the elements clause. See § 924(c)(3)(A). Consequently, I find that Count Eighteen was supported by the predicate of murder.

### CONCLUSION

For the reasons set forth above, Padilla has failed to show a basis for relief under 28 U.S.C. § 2255. Accordingly, his petition for relief is denied. Because he has not made a substantial showing of the denial of a constitutional right, I decline to issue a certificate of appealability. See 28 U.S.C. § 2253 (1996) (as amended by the Antiterrorism and Effective Death Penalty Act). I certify pursuant to 28 U.S.C. § 1915(a)(3) that any appeal taken from this order would not be taken in good faith. The Clerk of the Court is respectfully directed to enter judgment, accordingly, and terminate

the motion pending at 97 Cr. 809 (DC), document number 123, and 16 Civ. 3622 (DC),  
document number 11, and close the case.

SO ORDERED.

Dated: New York, New York  
March 24, 2021

\_\_\_\_\_  
s/DC  
DENNY CHIN  
United States Circuit Judge  
Sitting by Designation

# EXHIBIT B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
UNITED STATES OF AMERICA

: INDICTMENT

- v -

: S3 97 Cr. 809 (DC)

ELADIO PADILLA,  
a/k/a "Caco,"  
a/k/a "D,"

ALEX BONILLA,  
a/k/a "Omen,"  
a/k/a "O,"

DAVID DIAZ,  
a/k/a "Orejas,"  
a/k/a "Tito," and

NATHAN JONES,  
a/k/a "Jay,"

: Defendants. :  
----- x

RACKETEERING COUNTS

COUNT ONE

The Grand Jury charges:

The Enterprise

1. At all times relevant to this Indictment, in the Southern District of New York and elsewhere, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, were members and associates of a criminal organization known as Caco's Boys (hereinafter, "Caco's Boys" or "the enterprise"), whose members and associates engaged in murder, robbery, other acts of violence and narcotics trafficking.

2. Caco's Boys, including its leadership, its membership, and its associates, constituted an "enterprise," as defined by Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact, although not a legal



entity. At all times relevant to this Indictment, the enterprise operated in the Bronx, New York, among other locations, and was engaged in, and its activities affected, interstate commerce and foreign commerce.

Objects of the Enterprise

3. Among the objects of the enterprise were the following:

a. Enriching the members of the enterprise through dealing in cocaine base in a form commonly known as crack cocaine (hereinafter, "crack cocaine") and engaging in robbery.

b. Augmenting and preserving the financial profits of the enterprise by engaging in acts of violence and intimidation against competing drug organizations.

c. Preserving and protecting the power of the enterprise, and its leaders, members and associates, through the use of intimidation, threats of violence and violence, including murder.

d. Promoting and enhancing the enterprise and its members' and associates' activities, including the distribution of crack cocaine.

Means and Methods of the Enterprise

4. Among the means and methods by which the defendant and his associates conducted and participated in the conduct of the

affairs of the enterprise were the following:

a. The members and their associates would and did conspire to commit, attempt to commit, threaten to commit, and commit acts of violence, including murder and robbery.

b. The members and their associates would and did acquire, possess, carry and use deadly weapons, including firearms.

c. The members and their associates would and did distribute, and possess with intent to distribute, crack cocaine.

d. The members and their associates would and did establish, maintain, operate and control various locations where quantities of crack cocaine were stored and sold. The enterprise's retail distribution location for crack cocaine included, among other places, the vicinity of 578 East 141st Street, Bronx, New York.

#### Racketeering Violation

5. At various times from in or about October 1993, up to and including in or about October 1995, in the Southern District of New York and elsewhere, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, together with others known and unknown, being persons employed by and associated with the Caco's Boys enterprise described above, which was engaged in, and the activities of which affected, interstate and foreign commerce, unlawfully, willfully and knowingly conducted and participated, directly and indirectly, in the conduct of the affairs of that enterprise, through a pattern of racketeering activity, that is, through the commission of the following acts of racketeering:

### Acts of Racketeering

6. The pattern of racketeering activity as defined in Title 18, United States Code, Sections 1961(1) and 1961(5), consisted of the following acts:

#### Act of Racketeering One

7. ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, committed the following acts, either one of which alone constitutes the commission of Racketeering Act One:

- a. The Conspiracy to Murder Juan Rios, a/k/a "Amarito"

On or about July 17, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, willfully, and knowingly conspired to murder Juan Rios, a/k/a "Amarito," in violation of New York Penal Law.

- b. The Murder of Juan Rios, a/k/a "Amarito"

On or about July 17, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly murdered and aided and abetted the murder of Juan Rios, a/k/a "Amarito," in violation of New York Penal Law.

#### Act of Racketeering Two

8. ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, committed the following acts, any one of which alone

constitutes the commission of Racketeering Act Two:

a. The Conspiracy to Murder Juan Rios, a/k/a "Chato"

In or about July 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, willfully and knowingly conspired to murder Juan Rios, a/k/a "Chato," in violation of New York Penal Law.

b. The Attempted Murder of Juan Rios, a/k/a "Chato"

On or about July 29, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly attempted to murder and aided and abetted the attempted murder of Juan Rios, a/k/a "Chato," in violation of New York Penal Law.

c. The Murder of Jose Hernandez

On or about July 29, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly aided and abetted the murder of Jose Hernandez, in violation of New York Penal Law.

Act of Racketeering Three

9. ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, committed the following acts, either one of which

alone constitutes the commission of Racketeering Act Three:

a. The Conspiracy to Rob a Drug Dealer

In or about August 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, willfully and knowingly conspired to commit an act involving robbery, to wit, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," conspired to rob a drug dealer in the vicinity of East 141st Street and Beekman Avenue, Bronx, New York, in violation of New York Penal Law.

b. The Robbery of a Drug Dealer

In or about August 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, willfully and knowingly committed and aided and abetted the commission of an act involving robbery, to wit, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," robbed a drug dealer in the vicinity of East 141st Street and Beekman Avenue, Bronx, New York, in violation of New York Penal Law.

Act of Racketeering Four:

The Attempted Murder of Joseph Grajales, a/k/a "Macho,"  
a Member of a Rival Gang Known as the Hit Squad

10. On or about November 23, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly attempted to murder and aided and abetted the attempted murder of Joseph Grajales, a/k/a "Macho," a

member of a rival gang known as the Hit Squad, in violation of New York Penal Law.

Act of Racketeering Five

11. ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, committed the following acts, either one of which alone constitutes the commission of Racketeering Act Five:

- a. Conspiracy to Murder John Santos, a/k/a "Teardrop"

In or about February 1995, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, willfully, and knowingly conspired to murder John Santos, a/k/a "Teardrop," in violation of New York Penal Law.

- a. The Murder of John Santos, a/k/a "Teardrop"

On or about February 26, 1995, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly murdered and aided and abetted the murder of John Santos, a/k/a "Teardrop," in violation of New York Penal Law.

Act of Racketeering Six:  
Conspiracy to Distribute Narcotics

12. From in or about October 1993, up to and including in or about October 1995, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly did combine, conspire, confederate and agree together and with each

other to violate the narcotics laws of the United States, to wit, Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), that is, to distribute and possess with intent to distribute 50 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as crack cocaine, in violation of Title 21, United States Code, Section 846.

(Title 18, United States Code, Section 1962(c).)

COUNT TWO

The Grand Jury further charges:

13. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment are realleged and incorporated by reference as though fully set forth herein.

14. From in or about October 1993, up to and including in or about October 1995, in the Southern District of New York and elsewhere, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, being persons employed by and associated with Caco's Boys, an enterprise as defined in Title 18, United States Code, Section 1961(4) and described in Paragraphs 1 through 4 of Count One of this Indictment, which enterprise was engaged in, and the activities of which affected, interstate and foreign commerce, unlawfully, willfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise

through a pattern of racketeering activity as defined in Title 18, United States Code, Sections 1961(1) and (5), to wit, the commission of racketeering acts set forth in Paragraphs 7 through 12 in Count One of this Indictment as Racketeering Acts One through Six, which are incorporated by reference as if fully set forth herein. It was a part of the conspiracy that ELADIO PADILLA, the defendant, agreed to the commission of at least two acts of racketeering in the conduct of the affairs of the enterprise.

(Title 18, United States Code, Section 1962(d).)

VIOLENT CRIMES IN AID OF RACKETEERING COUNTS

COUNT THREE

The Grand Jury further charges:

15. Caco's Boys, as described in Paragraphs 1 through 4 of Count One of this Indictment, which are realleged and incorporated by reference as though fully set forth herein, constituted an enterprise as that term is defined in Title 18, United States Code, Section 1959(b)(2), that is, an association in fact of individuals engaged in, and the activities of which affected, interstate and foreign commerce.

16. As set forth in Paragraphs 7 through 12 of Count One of this Indictment, which are realleged and incorporated by reference as though fully set forth herein, Caco's Boys engaged in racketeering activity through its members and associates, as that term is defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder and robbery,



in violation of New York Penal Law, and narcotics trafficking, in violation of Title 21, United States Code, Sections 841 and 846.

17. On or about July 17, 1994, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, willfully, and knowingly conspired to murder Juan Rios, a/k/a "Amarito," in violation of New York Penal Law.

(Title 18, United States Code, Section 1959(a)(5).)

COUNT FOUR

The Grand Jury further charges:

18. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this Indictment, are realleged and incorporated by reference as though fully set forth herein.

19. On or about July 17, 1994, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known

and unknown, unlawfully, intentionally, and knowingly murdered Juan Rios, a/k/a "Amarito," in violation of New York Penal Law.

(Title 18, United States Code, Sections 1959(a)(1) and 2.)

COUNT FIVE

The Grand Jury further charges:

20. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this Indictment, are realleged and incorporated by reference as though fully set forth herein.

21. In or about July 1994, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and NATHAN JONES, a/k/a "Jay," the defendants, and others known and unknown, unlawfully, willfully, and knowingly conspired to murder Juan Rios, a/k/a "Chato," in violation of New York Penal Law.

(Title 18, United States Code, Section 1959(a)(5).)

COUNT SIX

The Grand Jury further charges:

22. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this Indictment, are realleged and incorporated by reference as though fully set forth herein.

23. On or about July 29, 1994, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and NATHAN JONES, a/k/a "Jay," the defendants, and others known and unknown, unlawfully, intentionally, and knowingly attempted to murder and aided and abetted the attempted murder of Juan Rios, a/k/a "Chato," in violation of New York Penal Law.

(Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT SEVEN

The Grand Jury further charges:

24. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this Indictment, are realleged and incorporated by reference as though fully set forth herein.

25. On or about July 29, 1994, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and NATHAN JONES, a/k/a "Jay," the defendants, and others known and unknown, unlawfully,

intentionally, and knowingly murdered and aided and abetted the murder of Jose Hernandez, in violation of New York Penal Law.

(Title 18, United States Code, Sections 1959(a)(1) and 2.)

COUNT EIGHT

The Grand Jury further charges:

26. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this Indictment, are realleged and incorporated by reference as though fully set forth herein.

27. On or about November 21, 1994, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and ALEX BONILLA, a/k/a "Omen," a/k/a "O," the defendants, and others known and unknown, unlawfully, willfully, and knowingly conspired to assault with a dangerous weapon members of a rival gang known as the Hit Squad, in violation of New York Penal Law.

(Title 18, United States Code, Section 1959(a)(6).)

COUNT NINE

The Grand Jury further charges:

28. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this

Indictment, are realleged and incorporated by reference as though fully set forth herein.

29. On or about November 21, 1994, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and ALEX BONILLA, a/k/a "Omen," a/k/a "O," the defendants, and others known and unknown, unlawfully, willfully, and knowingly assaulted with a dangerous weapon members of a rival gang known as the Hit Squad, in violation of New York Penal Law.

(Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT TEN

The Grand Jury further charges:

30. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this Indictment, are realleged and incorporated by reference as though fully set forth herein.

31. On or about November 23, 1994, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO

PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly attempted to murder and aided and abetted the attempted murder of Joseph Grajales, a/k/a "Macho," in violation of New York Penal Law.

(Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT ELEVEN

The Grand Jury further charges:

32. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this Indictment, are realleged and incorporated by reference as though fully set forth herein.

33. In or about February 1995, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, willfully, and knowingly conspired to murder of John Santos, a/k/a "Teardrop," in violation of New York Penal Law.

(Title 18, United States Code, Section 1959(a)(5).)

COUNT TWELVE

The Grand Jury further charges:

34. Paragraphs 1 through 4 and 7 through 12 of Count One of this Indictment, and Paragraphs 15 and 16 of Count Three of this

Indictment, are realleged and incorporated by reference as though fully set forth herein.

35. On or about February 26, 1995, in the Southern District of New York, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from Caco's Boys, and for the purpose of gaining entrance to and maintaining and increasing their positions in Caco's Boys, an enterprise engaged in racketeering activity, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly murdered John Santos, a/k/a "Teardrop," in violation of New York Penal Law.

(Title 18, United States Code, Sections 1959(a)(1) and 2.)

FIREARMS OFFENSES

COUNT THIRTEEN

The Grand Jury further charges:

36. On or about July 17, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, unlawfully, willfully and knowingly used and carried a firearm during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit, the conspiracy to murder and attempted murder of Juan Rios, a/k/a "Amarito," as charged in Racketeering Act One of Count One of this Indictment.

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

COUNT FOURTEEN

The Grand Jury further charges:

37. On or about July 29, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and NATHAN JONES, a/k/a "Jay," the defendants, unlawfully, willfully and knowingly used and carried a firearm during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit, the conspiracy to murder and attempted murder of Juan Rios, a/k/a "Chato," and murder of Jose Hernandez, as charged in Racketeering Act Two of Count One of this Indictment.

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

COUNT FIFTEEN

The Grand Jury further charges:

38. In or about August 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, unlawfully, willfully and knowingly used and carried a firearm during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit, the conspiracy to commit robbery and robbery of a drug dealer in the vicinity of East 141st Street and Beekman Avenue, as charged in Racketeering Act Three of Count One of this Indictment.

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



COUNT SIXTEEN

The Grand Jury further charges:

39. On or about November 21, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and ALEX BONILLA, a/k/a "Omen," a/k/a "O," the defendants, unlawfully, willfully and knowingly used and carried a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit, the conspiracy to assault with a dangerous weapon and assault with a dangerous weapon of members of a rival gang known as the Hit Squad as charged in Counts Nine and Ten of this Indictment.

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

COUNT SEVENTEEN

The Grand Jury further charges:

40. On or about November 23, 1994, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, unlawfully, willfully and knowingly used and carried a firearm during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit, the attempted murder of Joseph Grajales, a/k/a "Macho," as charged in Racketeering Act Four of Count One of this Indictment.

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

COUNT EIGHTEEN

The Grand Jury further charges:

41. On or about February 26, 1995, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," the defendant, unlawfully, willfully and knowingly used and carried a firearm during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit, the conspiracy to murder and murder of John Santos, a/k/a "Teardrop," as charged in Racketeering Act Five of Count One of this Indictment.

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

ACCESSORY AFTER THE FACT OFFENSE

COUNT NINETEEN

The Grand Jury further charges:

42. On or about July 17, 1994, in the Southern District of New York, ALEX BONILLA, a/k/a "Omen," a/k/a "O," and DAVID DIAZ, a/k/a "Orejas," a/k/a "Tito," the defendants, knowing that an offense against the United States had been committed, to wit, the conspiracy to murder and murder of Juan Rios, a/k/a "Amarito," as charged in Racketeering Act One of Count One of this Indictment, unlawfully, willfully and knowingly did receive, relieve, comfort and assist the offenders in order to hinder and prevent their apprehension, trial and punishment.

(Title 18, United States Code, Section 3.)

NARCOTICS OFFENSES

COUNT TWENTY

The Grand Jury further charges:

43. From in or about the October 1993, up to and including in or about October 1995, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D, ALEX BONILLA, a/k/a "Omen," a/k/a "O," and DAVID DIAZ, a/k/a "Orejas," a/k/a "Tito," the defendants, and others known and unknown, unlawfully, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to violate the narcotics laws of the United States.

44. It was a part and an object of this conspiracy that ELADIO PADILLA, a/k/a "Caco," a/k/a "D," ALEX BONILLA, a/k/a "Omen," a/k/a "O," and DAVID DIAZ, a/k/a "Orejas," a/k/a "Tito," the defendants, and others known and unknown, would and did distribute and possess with intent to distribute 50 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as crack cocaine, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

45. In furtherance of the conspiracy and to effect its illegal objects, the following overt acts, among others, were committed in the Southern District of New York:

a. At various times from in or about the Spring of 1994, through on or about September 29, 1995, ELADIO PADILLA,

a/k/a "Caco," a/k/a "D," and ALEX BONILLA, a/k/a "Omen," a/k/a "D," stored crack cocaine in an apartment located at 328 Beekman Avenue, # 1-I, Bronx, New York.

b. On or about July 17, 1994, in an apartment located at 328 Beekman Avenue, # 1-I, Bronx, New York, ELADIO PADILLA, a/k/a "Caco," murdered Juan Rios, a/k/a "Amarito."

c. On or about July 17, 1994, in an apartment located at 328 Beekman Avenue, # 1-I, Bronx, New York, ALEX BONILLA, a/k/a "Omen," and DAVID DIAZ, a/k/a "Orejas," a/k/a "Tito," assisted ELADIO PADILLA, a/k/a "Caco," in disposing of the murdered body of Juan Rios, a/k/a "Amarito."

d. On or about July 29, 1994, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," aided and abetted the attempted murder of Juan Rios, a/k/a "Chato."

e. In or about August 1994, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," robbed a drug dealer in the vicinity of East 141st Street and Beekman Avenue, Bronx, New York.

f. On or about November 21, 1994, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and ALEX BONILLA, a/k/a "Omen," a/k/a "O," engaged in a shootout with a rival gang known as the Hit Squad.

g. On or about November 23, 1994, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," attempted to murder Joseph Grajales, a/k/a "Macho," a member of a rival gang known as the Hit Squad.

h. On or about February 26, 1995, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," murdered John Santos, a/k/a "Teardrop."

i. On or about April 3, 1995, ALEX BONILLA, a/k/a "Omen," a/k/a "O," made a false statement to a New York City Police detective investigating the murder of John Santos, a/k/a "Teardrop."

j. On or about August 26, 1995, ALEX BONILLA, a/k/a "Omen," a/k/a "O," provided a sample of crack cocaine to an undercover officer.

k. On or about September 19, 1995, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," negotiated to sell 3500 vials of crack cocaine to an undercover officer.

l. On or about September 20, 1995, ALEX BONILLA, a/k/a "Omen," a/k/a "O," possessed approximately 2831 vials of crack cocaine.

(Title 21, United States Code, Section 846.)

COUNT TWENTY-ONE

The Grand Jury further charges:

46. From in or about the Spring of 1994, through on or about September 29, 1995, in the Southern District of New York, ELADIO PADILLA, a/k/a "Caco," a/k/a "D," and ALEX BONILLA, a/k/a "Omen," a/k/a "O," the defendants, unlawfully, intentionally and knowingly did open and maintain a place for the purpose of manufacturing, distributing and using controlled substances, to wit, the defendants maintained a room in an apartment located at

328 Beekman Avenue, # 1-I, Bronx, New York, to manufacture and distribute cocaine base, commonly known as crack cocaine.

(Title 21, United States Code, Section 856; Title 18, United States Code, Section 2.)

FOREPERSON

  
MARY JO WHITE  
United States Attorney

# EXHIBIT C



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*The Silvio J. Molto Building  
One Saint Andrew's Plaza  
New York, New York 10007*

April 24, 2000

Bobbi C. Sternheim, Esq.  
Rochman, Platzer, Fallick & Sternheim  
666 Third Avenue  
New York, New York 10017

**Re: United States v. Eladio Padilla  
S3 97 Cr. 809 (DC)**

Dear Ms. Sternheim:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Eladio Padilla ("the defendant") to Counts Three, Five, Ten, Eleven, and Eighteen of the above-referenced Indictment.

Count Three charges the defendant with conspiracy to murder Juan Rios, a/k/a "Amarito," in violation of Title 18, United States Code, Section 1959(a)(5). Count Three carries a maximum sentence of 10 years' imprisonment; a maximum term of 3 years' supervised release; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a mandatory \$50 special assessment. Full restitution, pursuant to Title 18, United States Code, Sections 3663 and 3664, may also be ordered.

Count Five charges the defendant with conspiracy to murder Juan Rios, Jr., a/k/a "Chato," in violation of Title 18, United States Code, Section 1959(a)(5). Count Five carries a maximum sentence of 10 years' imprisonment; a maximum term of 3 years' supervised release; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other



than the defendant resulting from the offense; and a mandatory \$50 special assessment. Full restitution, pursuant to Title 18, United States Code, Sections 3663 and 3664, may also be ordered.

Count Ten charges the defendant with the attempted murder of Joseph Grajales, a/k/a "Macho," in violation of Title 18, United States Code, Sections 1959(a)(5) and 2. Count Ten carries a maximum sentence of 10 years' imprisonment; a maximum term of 3 years' supervised release; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a mandatory \$50 special assessment. Full restitution, pursuant to Title 18, United States Code, Sections 3663 and 3664, may also be ordered.

Count Eleven charges the defendant with conspiracy to murder John Santos, a/k/a "Teardrop," in violation of Title 18, United States Code, Section 1959(a)(5). Count Eleven carries a maximum sentence of 10 years' imprisonment; a maximum term of 3 years' supervised release; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a mandatory \$50 special assessment. Full restitution, pursuant to Title 18, United States Code, Sections 3663 and 3664, may also be ordered.

Count Eighteen charges the defendant with use of a firearm during a crime of violence, namely, the conspiracy to murder John Santos, a/k/a "Teardrop," as charged in Count Eleven, in violation of Title 18, United States Code, Section 924(c). Count Eighteen carries a mandatory term of five years' imprisonment, which must run consecutive to any other term of imprisonment; a maximum term of 3 years' supervised release; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greater of \$250,000 or twice the gross pecuniary gain derived from the offense; and a mandatory \$50 special assessment.

The defendant's total maximum term of incarceration on Counts Three, Five, Ten, Eleven and Eighteen is 45 years' imprisonment.

In consideration of his plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for conduct

charged in Indictment S3 97 Cr. 809 (DC). In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

In consideration of the foregoing and pursuant to Sentencing Guidelines § 6B1.4 (as in effect on November 1, 1998), the parties hereby stipulate to the following:

A. Offense Level

1. Because upon pleading guilty, the defendant will have been convicted on more than one count, Sentencing Guidelines § 3D1.1 is applicable to Counts Three, Five, Ten, Eleven, and Eighteen. Since Counts Three, Five, Ten, and Eleven involve different victims, each count is considered a separate group. Count Eighteen is excluded from the application of the grouping analysis, pursuant to Sentencing Guidelines § 3D1.1(b).
2. Group I. With respect to Count Three, because the conspiracy to murder Juan Rios, a/k/a "Amarito," resulted in his death, Sentencing Guidelines § 2A1.1 is applicable, and the defendant's base offense level is 43. U.S.S.G. §§ 2E1.3(a)(2), 2A1.5(c)(1) and 2A1.1.
3. Group II. With respect to Count Five, because the conspiracy to murder Juan Rios, Jr., a/k/a "Chato," resulted in the death of Jose Hernandez, Sentencing Guidelines § 2A1.1 is applicable, and the defendant's base offense level is 43. U.S.S.G. §§ 2E1.3(a)(2), 2A1.5(c)(1) and 2A1.1.
4. Group III. With respect to Count Ten, because the object of the offense would have constituted first degree murder, the defendant's base offense level is 28. U.S.S.G. §§ 2E1.3(a)(2) and 2A2.1(a)(1). Because the victim sustained serious bodily injury, the base level is increased by 2 levels. U.S.S.G. § 2A2.1(b)(1)(B). In addition, because the offense involved the offer or receipt of a thing of pecuniary value for undertaking the murder, the base offense level is increased by 4 levels. U.S.S.G. § 2A2.1(b)(2). Based on the above, the defendant's adjusted offense level, with respect to Group III, is 34.

5. Group IV. With respect to Count Eleven, because the conspiracy to murder John Santos, a/k/a "Teardrop," resulted in his death, Sentencing Guidelines § 2A1.1 is applicable, and the defendant's base offense level is 43. U.S.S.G. §§ 2E1.3(a)(2), 2A1.5(c)(1) and 2A1.1.
6. Under the applicable grouping provisions of the Sentencing Guidelines, Groups One, Two, and Four each count as one unit, and Group Three counts as zero units. U.S.S.G. §§ 3D1.4(a) and (c). The resulting total is 3 units. Pursuant to Sentencing Guidelines § 3D1.4, there is a 3-level increase in the defendant's offense level, resulting in an adjusted offense level of 46.
7. Assuming the defendant pleads guilty and allocutes to the satisfaction of the Court on or before April 28, 2000, he will have demonstrated a recognition and an affirmation of personal responsibility for his criminal conduct, and will have thereby enabled the Government to avoid preparing for trial against him and the Court to allocate its resources efficiently, resulting in a 3-level decrease in the offense level pursuant to Sentencing Guidelines §§ 3E1.1(a) and 3E1.1(b)(2).<sup>1</sup>
8. In accordance with the above, the resulting applicable Guidelines offense level is 43.
9. Additionally, in light of the defendant's plea of guilty to Count Eighteen, i.e., a violation of 18 U.S.C. § 924(c), the Court must impose a mandatory 5 year term of imprisonment to run consecutive to any other term of imprisonment. U.S.S.G. §§ 2K2.4(a) and 5G1.2(a).

B. Criminal History Category

Based upon the information now available to this Office

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<sup>1</sup> The defendant agrees to allocute that: i) the conspiracy to murder Juan Rios, a/k/a "Amarito," as charged in Count Three, resulted in the shooting and dismemberment of the victim; ii) the conspiracy to murder Juan Rios, Jr., a/k/a "Chato," as charged in Count Five, resulted in the shooting death of a bystander, Jose Hernandez; and iii) the conspiracy to murder John Santos, a/k/a "Teardrop," as charged in Count Eleven, resulted in the shooting death of the victim.

(including representations by the defense), the defendant has the following criminal history.

1. On or about June 1, 1989, the defendant was convicted upon a plea of guilty, in Supreme Court, Bronx, New York, of assault with intent to cause serious injury with a weapon, in violation of New York Penal Law § 120.10, for which he received a sentence of 2 to 6 years' imprisonment. Pursuant to Sentencing Guidelines § 4A1.1(a), 3 criminal history points are assessed against the defendant in determining his criminal history.
2. On or about May 20, 1996, the defendant was convicted upon a plea of guilty, in Supreme Court, Bronx, New York, of criminal possession of a weapon, in violation of New York Penal Law § 265.02, for which he received a sentence of 30 months' to 5 years' imprisonment. Pursuant to Sentencing Guidelines § 4A1.1(a), 3 criminal history points are assessed against the defendant in determining his criminal history.
3. On or about May 20, 1996, the defendant was convicted upon a plea of guilty, in Supreme Court, Bronx, New York, of criminal sale of a controlled substance, in violation of New York Penal Law § 220.41, for which he received a sentence of 54 months' to 9 years' imprisonment. Pursuant to Sentencing Guidelines § 4A1.1(a), 3 criminal history points are assessed against the defendant in determining his criminal history.
4. Because the defendant committed the instant offenses while under a criminal justice sentence, namely, the parole resulting from his June 1, 1989 conviction, and less than two years after his release for that conviction, 3 criminal history points are assessed against the defendant in determining his criminal history. U.S.S.G. § 4A1.1(d) and (e).
5. In accordance with the above, the defendant has a total of 12 criminal history points and the defendant's Criminal History Category is V. Pursuant to U.S.S.G. § 4B1.1, because the instant offenses include a felony that is a crime of violence, and the defendant has two prior felony convictions involving either a crime of violence or narcotics trafficking, namely, his June 1, 1989 assault conviction and his May 20, 1996 narcotics

conviction, he is a career offender, and his criminal history category is VI.

C. Sentencing Range

Based on the calculations set forth above, the defendant's Guidelines sentence is life imprisonment. However, since the statutory maximum term of incarceration for the offenses to which the defendant will plead guilty is 45 years' (540 months') imprisonment, the defendant's stipulated Guidelines range is 45 years' imprisonment. U.S.S.G. §§ 5G1.1(a) and 5G1.2(d). The defendant reserves his right to request that the Court impose this sentence to run concurrently with his state sentence. In addition, the defendant intends to ask the Court to recommend to the Bureau of Prisons that he receive credit on his sentence from October 29, 1997, the date he was brought into federal custody. The Government will take no position with regard to whether the defendant's sentence should run concurrently or to the request that the Court recommend to the Bureau of Prisons that the defendant receive credit from October 29, 1997. The Government leaves these determinations to the discretion of the Court.

The parties agree that neither a downward nor an upward departure from the Guidelines range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court sua sponte consider such a departure or adjustment.

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Guidelines range set forth above (or such other range as the Court may determine) the defendant should be sentenced; (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, see U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, see U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this agreement.

It is understood that pursuant to Sentencing Guidelines § 6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court, though in no event may the Court impose a sentence greater than the total statutory maximum sentence of 45 years' imprisonment. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the stipulated Guidelines range set forth above.

It is further agreed (i) that the defendant will neither appeal, nor otherwise litigate under Title 28, United States Code, Section 2255, any sentence of 45 years or less and (ii) that the Government will not appeal a sentence of 45 years. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation.

The defendant hereby acknowledges that he has accepted this plea Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on appeal or collaterally, on the ground that the Government has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and impeachment material pursuant to Giglio v. United States, 405 U.S. 150 (1972) that has not already been produced as of the date of the signing of this Agreement.

It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the

defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

MARY JO WHITE  
United States Attorney

By: *I. Bennett Capers*  
I. Bennett Capers  
Assistant United States Attorney  
(212) 637-2263

APPROVED:

[Redacted Signature]  
Vernon S. Broderick  
Chief, Violent Gangs Unit

AGREED AND CONSENTED TO:

[Redacted Signature]  
Eladio Padilla

4/24/00  
DATE

APPROVED: *[Signature]*  
[Redacted Signature]  
Bobbi C. Sternheim, Esq.  
Attorney for Eladio Padilla

4/24/00  
DATE



# EXHIBIT D

*Doc # 54*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**Original**

UNITED STATES OF AMERICA

**COPY**

S3 97 Cr. 809 DC/FM

v.

ELADIO PADILLA,

Defendant.

New York, N.Y.  
April 24, 2000  
4:05 p.m.

Before:

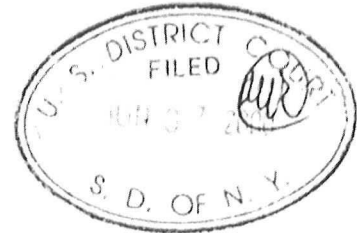
HON. FRANK MAAS,

Magistrate Judge

APPEARANCES

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
BY: BENNETT CAPERS  
Assistant United States Attorney

BOBBI C. STERNHEIM  
Attorney for defendant



1 (Case called)

2 MS. STERNHEIM: Judge, may I hand up the consent to  
3 proceed?

4 THE COURT: Please.

5 MS. STERNHEIM: And here is a copy of the agreement  
6 that has been fully executed.

7 THE COURT: Is it the same as the one that was  
8 furnished to me the other day?

9 MR. CAPERS: It is not, Judge. There is just one  
10 change and that appears on page 6. Page 6, just the language  
11 in the first full paragraph has been modified.

12 THE COURT: What was the change -- I see. There is  
13 additional language?

14 MR. CAPERS: There was an issue with respect to when  
15 the 45-year sentence would begin.

16 THE COURT: I see. The version which I am discarding  
17 said it would be consecutive and this version says the  
18 government takes no position as to that issue. Correct?

19 MR. CAPERS: That's it in a nutshell, Judge.

20 THE COURT: Mr. Padilla, my name is Judge Maas. The  
21 indictment in this case, which is a third superseding  
22 indictment, charges you in a number of counts with a variety  
23 of crimes. As I understand it, today you are offering to  
24 plead guilty to Counts 3, 5, 10, 11 and 18 of that superseding  
25 indictment.

1 Is that correct, Miss Sternheim?

2 MS. STERNHEIM: That is correct.

3 THE COURT: In those counts, you were charged with  
4 the crimes of conspiracy to murder several individuals, with  
5 the crime of attempted murder of an individual, and with the  
6 crime of using a firearm during a crime of violence, which is  
7 the conspiracy to murder John Santos.

8 With respect to each of those charges, sir, you have  
9 the right to a jury trial, and, if you were found guilty, to  
10 be sentenced before a United States district judge. Do you  
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: I understand that notwithstanding that  
14 right you wish to plead guilty to the counts that I mentioned  
15 previously before me this afternoon; is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you execute a consent to proceed  
18 before a United States magistrate judge on a felony plea  
19 allocution earlier today?

20 THE DEFENDANT: Yes.

21 THE COURT: Did your attorney Miss Sternheim also  
22 sign that document?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you read the consent form before you  
25 signed it?

1 THE DEFENDANT: Yes.

2 THE COURT: I am going to need to ask you some  
3 questions this afternoon, so let me ask you first to raise  
4 your right hand -- as best you can. I guess we will dispose  
5 of that, given the fact that you are handcuffed.

6 Sir, do you solemnly swear that all of the  
7 information you are going to give me this afternoon in  
8 response to my questions will be true and correct, so help you  
9 God?

10 THE DEFENDANT: Yes.

11 BY THE COURT:

12 Q Would you tell me first your full name.

13 A Eladio Padilla, Jr.

14 Q Mr. Padilla, how old are you, sir?

15 A Twenty-nine.

16 Q How far did you go in school?

17 A Ninth grade.

18 Q Are you currently or have you recently been under the care  
19 of either a doctor or a psychiatrist for any reason?

20 A No.

21 Q Are you currently taking medication of any sort?

22 A No.

23 Q Have you ever been treated for either alcoholism or drug  
24 addiction?

25 A No.

1 Q As you sit before me today, do you feel OK?

2 A Yes.

3 Q Do you have any trouble understanding the questions I am  
4 asking you?

5 A No.

6 Q Am I correct that you have received a copy of this third  
7 superseding indictment?

8 A Yes.

9 Q With respect to the counts of that indictment as to which  
10 you are pleading guilty, or proposing to plead guilty, do you  
11 wish me to read the text of those counts to you?

12 A Yes.

13 My lawyer read them to me already.

14 Q Even though you have read them, the question I am asking  
15 is, do you want me to read those portions of the indictment to  
16 you or will you waive that reading?

17 A I waive that.

18 Q Do you understand what it is that the indictment charges  
19 you did in those counts of the indictment?

20 A Yes.

21 Q Have you had adequate time to talk with Ms. Sternheim  
22 about those charges?

23 A Yes.

24 Q And about how you wish to plead with respect to them?

25 A Yes.

1 Q Are you satisfied with the representation Miss Sternheim  
2 has given to you and the advice she has given to you?

3 A Yes.

4 Q At this time are you ready to plead with respect to Counts  
5 3, 5, 10, 11 and 18 of the third superseding indictment?

6 A Yes.

7 Q What is your plea, sir?

8 A Guilty.

9 Q Even though you have told me you are guilty of those  
10 counts, it is my job to make sure that your plea of guilty is  
11 being made voluntarily and that you fully understand the  
12 charges against you and the possible consequences of your  
13 plea. So I will be asking you some additional questions.

14 First, do you understand that in Count 3 you were  
15 charged with participating in a conspiracy to murder Juan  
16 Rios, also known as Amarito, in violation of Title 18 United  
17 States Code, section 1959?

18 A Yes.

19 Q Do you understand that that count carries with it a  
20 maximum sentence of 10 years' imprisonment, a maximum term of  
21 three years' supervised release, a maximum fine pursuant to  
22 Title 18 United States Code, section 3571, of the greatest of  
23 \$250,000 or twice the amount of money that you derived from  
24 the offense or twice the amount of loss that was caused to  
25 persons other than you as a result of the offense, as well as

1 a mandatory special assessment and full restitution pursuant  
2 to Title 18 United States Code sections 3663 and 3664?

3 A Yes.

4 Q Do you understand that Count 5 charges you with  
5 participating in a conspiracy to murder Juan Rios, Jr., also  
6 known as Chatto, in violation of that same statute?

7 A Yes.

8 Q Do you understand that the penalties for the crime charged  
9 in Count 5 are the same as the penalties for that crime  
10 charged in Count 3?

11 A Yes.

12 Q Do you understand that Count 10 charges you with the  
13 attempted murder of Joseph Grajales, also known as Macho,  
14 which is a violation of sections 1959(a)(5) and 2 of Title 18  
15 United States Code?

16 A Yes.

17 Q Do you understand that that count carries a maximum  
18 sentence of 10 years' imprisonment, a maximum term of three  
19 years' supervised release, a maximum fine pursuant to Title 18  
20 United States Code, section 3571, of the greatest of \$250,000  
21 or twice the amount of money that you derived from the offense  
22 or twice the amount of loss that you caused to persons other  
23 than yourself as a result of the offense, as well as a  
24 mandatory \$50 special assessment, and that full restitution  
25 pursuant to Title 18 United States Code, sections 3663 and



1 3664, may also be ordered?

2 A Yes.

3 Q Turning to Count 11, do you understand that you were  
4 charged in that count with conspiring with others to murder  
5 John Santos, also known as Teardrop, in violation of Title 18,  
6 United States Code, section 1959(a)(5)?

7 A Yes.

8 Q Do you understand that that count carries with it a  
9 maximum sentence of 10 years' imprisonment, a maximum term of  
10 three years' supervised release, a maximum fine pursuant to  
11 Title 18 United States Code, section 3571, of the greatest of  
12 \$250,000 or twice the amount of money that you derived from  
13 the offense or twice the amount of loss that you caused to  
14 persons other than yourself as a result of the offense, and a  
15 mandatory \$50 special assessment?

16 A Yes.

17 Q Do you also understand that the court may order full  
18 restitution pursuant to title 18 United States Code sections  
19 3663 and 3664?

20 A Yes.

21 Q Finally, with respect to Count 18, do you understand that  
22 you were charged in that count with the use of a firearm  
23 during a crime of violence, that crime being participating in  
24 the conspiracy to murder John Santos, also known as Teardrop,  
25 as charged in Count 11 of the indictment, and that that is a

1 violation of title 18 United States Code section 924(c)?

2 A Yes.

3 Q Do you understand that Count 18 carries with it a  
4 mandatory term of five years imprisonment which must run  
5 consecutive to any other term of imprisonment that the  
6 district judge may impose, as well as a maximum term of three  
7 years' supervised release, a maximum fine pursuant to Title 18  
8 United States Code, section 3571, of the greater of \$250,000  
9 or twice the amount of money that was derived from the  
10 offense, and a mandatory \$50 special assessment?

11 A Yes.

12 Q Do you understand that by pleading guilty to these counts  
13 you would be exposing yourself to a maximum term of  
14 imprisonment of 45 years in jail?

15 A Yes.

16 Q With respect to the terms of supervised release that I  
17 described earlier, do you understand that if you are placed on  
18 supervised release and then violate any term or condition of  
19 that supervised release, the court could revoke your term of  
20 supervised release and require you to serve in prison all or  
21 part of the three-year term of supervised release authorized  
22 by statute, without any credit for time previously served on  
23 post release supervision?

24 A Yes.

25 THE COURT: I would ask that the government with

1 respect to each of these offenses set forth the elements of  
2 the crime.

3 MR. CAPERS: Judge, are you asking for the factual  
4 basis or what the elements of each --

5 THE COURT: The elements.

6 MR. CAPERS: With respect to Counts 3, 5, and 11,  
7 which charge conspiracy to commit murder, the government has  
8 to establish that there was an agreement to commit the offense  
9 of murder, and that the defendant participated in that  
10 conspiracy knowingly and voluntarily, and that the murder was  
11 committed in connection with the racketeering enterprise,  
12 either as consideration for money or for the defendant to  
13 maintain and increase his position within that enterprise, and  
14 also the existence of an enterprise.

15 With respect to Count 10, the attempted murder, it is  
16 basically the same elements. You simply substitute the  
17 conspiracy for the attempted murder or aiding and abetting the  
18 attempted murder of the victim, Joseph Grajales.

19 With respect to Count 18, the 924(c) count, the  
20 elements are that the defendant used or carried a gun in  
21 connection with the crime of violence, that he did so  
22 knowingly and voluntarily, and lastly, the offense was a crime  
23 of violence as defined under the statute.

24 THE COURT: Thank you, sir.

25 Q Mr. Padilla, do you understand that those are the elements

1 of the crimes to which you are offering to plead guilty?

2 A Yes.

3 Q Do you understand that you have the right to plead not  
4 guilty and to have a jury trial on each of those charges?

5 A Yes.

6 Q Do you understand that if you do plead not guilty and go  
7 to trial, the burden would be on the government to prove each  
8 of those elements beyond a reasonable doubt before you could  
9 be found guilty?

10 A Yes.

11 Q Do you understand that at a trial you would be presumed  
12 innocent unless and until the government proved your guilt  
13 beyond a reasonable doubt?

14 A Yes.

15 Q Do you understand that at such a trial you would have the  
16 right to be represented by counsel at all stages, and, if  
17 necessary, an attorney would be appointed to represent you?

18 A Yes.

19 Q Do you understand that at a trial you would have the right  
20 to confront and question any witnesses who testify against  
21 you, as well as the right not to be forced to incriminate  
22 yourself, which means you would not have to be a witness  
23 against yourself?

24 A Yes.

25 Q Do you understand that at a trial you would be entitled to

1 call witnesses to testify in your behalf?

2 A Yes.

3 Q Do you understand that if you plead guilty there will be  
4 no trial of any kind so that you are giving up your right to a  
5 trial and the only remaining step will be for the district  
6 judge to sentence you?

7 A Yes.

8 Q Do you understand the nature of the charges to which you  
9 are pleading guilty?

10 A Yes.

11 Q Do you also understand the range of penalties, including  
12 the maximum sentence to which you are potentially subjecting  
13 yourself by your plea?

14 A Yes.

15 Q Have you and your attorney, Ms. Sternheim, talked about  
16 how the Sentencing Commission Guidelines may apply to your  
17 case?

18 A Yes.

19 Q Do you understand that the district judge will not be able  
20 to determine the precise guidelines for your case until after  
21 the presentence report has been completed and both you and the  
22 government have had an opportunity to challenge the facts  
23 reported by the probation officer?

24 A Yes.

25 Q Do you also understand that after it has been determined

1 what guideline applies to a case, the district judge has the  
2 authority in some circumstances to impose a sentence that is  
3 either more severe or less severe than the sentence called for  
4 by the guidelines?

5 A Yes.

6 Q Do you understand that under some circumstances either you  
7 or the government may have the right to appeal any sentence  
8 that is imposed?

9 A Yes.

10 Q Do you understand that parole has been abolished, so that  
11 if you are sentenced to prison you will not be released on  
12 parole?

13 A Yes.

14 Q Do you also understand that the answers you give me today  
15 under oath may be used in the future against you in a  
16 prosecution for perjury or false statement if you do not tell  
17 me the truth?

18 A Yes.

19 Q Understanding all of that, do you still wish to plead  
20 guilty?

21 A Yes.

22 Q Am I correct that your willingness to plead guilty is in  
23 part the result of discussions that you or your attorney have  
24 had with representatives of the government?

25 A Yes.

1 Q I have before me a letter dated April 24, 2000, on the  
2 letterhead of the United States Attorney's Office. Are you  
3 familiar with that letter?

4 A Yes.

5 Q Did you review that letter with Miss Sternheim?

6 A Yes.

7 Q Did both you and she sign the letter agreement to indicate  
8 your understanding and consent to this agreement earlier  
9 today?

10 A Yes.

11 Q Is it your understanding that it has also been signed by  
12 two Assistant U.S. Attorneys in behalf of the government?

13 A Yes.

14 Q The agreement contains a fairly lengthy discussion of how  
15 the sentencing guidelines may apply in your case, is that  
16 right?

17 A Yes.

18 Q Do you understand that the terms of the plea agreement  
19 concerning sentencing are not binding on the court and that  
20 the court may reject any recommendations or any calculations  
21 set forth in the agreement without permitting you to withdraw  
22 your plea of guilty and could then impose a more severe  
23 sentence?

24 A Yes.

25 Q Do you also understand that pursuant to the terms of this

1 agreement you have limited the circumstances under which you  
2 may appeal from any sentence that is imposed?

3 A Yes.

4 Q Apart from what is set forth in this written agreement  
5 which I have before me, have any other promises of any sort  
6 been made to you to influence you to plead guilty before me  
7 today?

8 A No.

9 Q Have any promises been made to you concerning the sentence  
10 you will receive?

11 A No.

12 Q Have any threats been made to you by anyone to influence  
13 you to plead guilty today?

14 A No.

15 Q Is your plea voluntary and made of your own free will?

16 A Yes.

17 Q Did you in fact commit the crimes charged in Counts 3, 5,  
18 10, 11 and 18 of the superseding indictment?

19 A Yes.

20 Q Let's take it one count at a time. First, with respect to  
21 Count 3, which charges a conspiracy to murder Juan Rios, also  
22 known as Amarito, can you tell me what you did that makes you  
23 guilty of this crime.

24 A Me and others unknown --

25 Q Talk a little louder so I can hear you.



1 A Me and others unknown to the court plotted a conspiracy  
2 together to murder Juan Rios.

3 Q Were the other people, or at least some of them that you  
4 plotted with, part of an organization known as Caco's Boys?

5 A Yes.

6 Q Did Caco's Boys engage in activities in the Bronx, among  
7 other locations?

8 A Yes.

9 Q Was part of the purpose for which Caco's Boys existed to  
10 deal in crack cocaine?

11 A Yes.

12 Q Was Mr. Rios in fact killed?

13 A Yes, he was shot and dismembered.

14 Q And you participated in that crime, is that correct?

15 A Yes.

16 Q Clearly, at the time that you were doing that you  
17 understood that what you were doing was wrong, right?

18 A Yes.

19 Q Where was Mr. ReMr. Rios at the time that he was shot and  
20 dismembered?

21 A Bronx.

22 Q In the Bronx?

23 A Yes.

24 THE COURT: What is the government's contention with  
25 respect to whether this was done for pecuniary value or to

1 maintain and increase the position of the defendant in this  
2 organization?

3 MR. CAPERS: For the latter, Judge.

4 Q Mr. Padilla, at the time that you did this, or engaged in  
5 this crime, did you do that in an effort to maintain and  
6 increase your position in that organization known as Caco's  
7 Boys?

8 A Yes.

9 THE COURT: Is there anything further that you  
10 believe needs to be asked with respect to the crime charged in  
11 Count 3, Mr. Capers?

12 MR. CAPERS: Your Honor, I think the date that this  
13 happened, on or about July 17, 1994.

14 Q Is that correct, sir, that that is approximately when  
15 Mr. Rios was shot and dismembered?

16 A July, yes.

17 Q July of 1994?

18 A Yes.

19 Q In Count 5, you were charged with conspiracy to murder a  
20 second Mr. Rios, also known as Chatto. Can you tell me what  
21 you did that makes you guilty of that crime.

22 A I agreed with others --

23 Q I have two problems. One, I can't hear you.

24 MS. STERNHEIM: I will help, your Honor.

25 A Me and others agreed to have Chatto killed.

1 Q Was Chatto in fact killed?

2 A No.

3 MR. CAPERS: For the record, your Honor, the  
4 defendants and others conspired to kill Chatto. They hired a  
5 hit man to do it. The hit man shot and killed the wrong  
6 person and that person's name is Jose Hernandez.

7 Q So if I understand what you are saying, you agreed with  
8 others to have Chatto killed, is that right?

9 A Yes.

10 Q Do you agree with the government that you and the others  
11 arranged to have somebody else do that?

12 A Yes.

13 Q The person who was hired in fact killed somebody else, is  
14 that correct?

15 A Yes.

16 Q At the time that you and the others agreed to have Chatto  
17 killed, was that in connection with the operation of Caco's  
18 Boys?

19 A Yes.

20 Q Did you reach this agreement to kill or have Chatto killed  
21 in or around July of 1994?

22 A Yes.

23 Q Where were you when you and the others arranged to have  
24 Chatto killed?

25 A I was in the car.

1 Q But in what borough?

2 A In the Bronx.

3 Q Did you make those arrangements at least in part to either  
4 maintain or increase your own position in Caco's Boys?

5 A Yes.

6 THE COURT: With respect to the crime charged in  
7 Count 5, Mr. Capers, are there further questions you believe  
8 are required?

9 MR. CAPERS: No, Judge. I think that covers it.

10 Q Turning to Count 10, which charges you with the  
11 substantive crime of the attempted murder of Joseph Grajales,  
12 also known as Macho, can you tell me what you did, sir, that  
13 makes you guilty of that crime.

14 A Me and others conspired to have Macho shot.

15 Q When you reached that agreement with other people, where  
16 were you located?

17 A Excuse me.

18 Q Where were you when you reached that agreement?

19 A In the Bronx.

20 Q Did you reach that agreement in or around November of  
21 1994?

22 A Yes.

23 Q Did you do that as part of the operation of an  
24 organization known as Caco's Boys?

25 A Yes.

1 Q Did you do that for the purpose of maintaining and  
2 increasing your own position in that organization?

3 A Yes.

4 Q With respect to this count and each of the prior counts,  
5 you understood that what you were doing was wrong, is that  
6 correct?

7 A Yes.

8 THE COURT: Are there further questions that the  
9 government believes should be asked with respect to Count 10?

10 MR. CAPERS: Your Honor, as I have discussed with  
11 defense counsel, because this count charges an attempt rather  
12 than a conspiracy, the defendant really needs to allocute as  
13 to what he did to attempt to kill the victim, and he is  
14 prepared to do that.

15 Q Why don't you tell us about that, sir.

16 A I knew about the attempt that was made on him.

17 Q Had you previously discussed with others the fact that an  
18 attempt would be made on this individual's life?

19 A Yes, I was present when the attempt was made on his life.

20 Q What did you do with respect to that attempt? Did you  
21 play any role in it other than knowing that it was going to  
22 happen?

23 A Yes. I told him to do it.

24 Q When you are talking about him, is that somebody who then  
25 attempted to kill Macho?

1 A Excuse me.

2 Q When you say I told him to do it, is the person you are  
3 talking about somebody who then attempted to kill somebody  
4 whose name was Joseph Grajales, also known as Macho?

5 A Yes.

6 Q When you told him to do that, were you in the Bronx?

7 A Yes.

8 THE COURT: Anything further with respect to that  
9 count, Mr. Capers?

10 MR. CAPERS: Your Honor, I think that establishes a  
11 sufficient factual basis. I would just point out that the  
12 government's evidence at trial would be that the defendant  
13 along with the coconspirator were both shooting at the victim.  
14 They were shooting at him from the roof of a building and it  
15 was connected to a rivalry between this organization and a  
16 rival competing drug organization.

17 Q If I haven't asked you already with respect to Count 10  
18 and the attempted murder of Joseph Grajales, did you instruct  
19 somebody else to shoot him in part to either maintain or  
20 increase your position in the organization known as Caco's  
21 Boys?

22 A Yes.

23 Q Moving on to Count 11, which charges you with conspiring  
24 with others to murder John Santos, also known as Teardrop, can  
25 you tell me what you did that makes you guilty of that crime?

1 A Me and others conspired to kill Teardrop. I actually  
2 pulled the trigger.

3 Q Did you say "I actually pulled the trigger"?

4 A Yes.

5 Q Where was Teardrop shot?

6 A In the Bronx.

7 Q Did you and the others agree to do that in or around  
8 February of 1995?

9 A Yes.

10 Q When you reached that agreement, was that also in the  
11 Bronx?

12 A Yes.

13 Q Clearly you understood that conspiring to kill somebody  
14 and actually attempting to kill him was wrong, correct?

15 A Yes.

16 Q Did you engage in the activities you just told me about in  
17 February of 1995 for the purpose of either maintaining or  
18 increasing your position in an organization known as Caco's  
19 Boys?

20 A Yes.

21 THE COURT: With respect to this count, Mr. Capers,  
22 are any questions required?

23 MR. CAPERS: No, Judge.

24 Q Finally, Count 18 charges that during the crime charged in  
25 Count 11 you used a firearm. You told me that you shot John

1 Santos, is that right?

2 A Yes.

3 Q Was he in fact killed?

4 A Yes.

5 Q What type of weapon did you use?

6 A I can't recall.

7 Q Was it a handgun?

8 A Yes, it was a handgun, yes.

9 Q You told me earlier he was shot in the Bronx, correct?

10 A Yes.

11 THE COURT: With respect to Count 18, are there  
12 further questions you believe are required, Mr. Capers?

13 MR. CAPERS: No, Judge.

14 THE COURT: Mr. Capers, do you know of any reason why  
15 this defendant should not plead guilty?

16 MR. CAPERS: None at all, Judge.

17 THE COURT: How about you, Miss Sternheim?

18 MS. STERNHEIM: No.

19 THE COURT: Having heard from the defendant,  
20 Mr. Padilla, I am satisfied that he understands the nature of  
21 the charges against him and the consequence of his pleas of  
22 guilty to the various counts that he has pled guilty to. I am  
23 also satisfied that his plea is made voluntarily and knowingly  
24 and that there is an adequate factual basis for his plea, and  
25 on that basis I will recommend to the assigned district



1 judge -- that is Judge Chin?

2 MS. STERNHEIM: Yes.

3 MR. CAPERS: Yes, Judge.

4 THE COURT: -- that this defendant's plea of guilty  
5 be accepted. Has Judge Chin set a sentencing date?

6 MR. CAPERS: He hasn't, Judge, but I will contact  
7 him, get a sentencing date, and let defense counsel know.

8 THE COURT: Simply, I can't imagine that it would,  
9 but so that this case doesn't slip through the cracks, I will  
10 set July 24, at 4:00 p.m., before Judge Chin as the sentencing  
11 date and time, subject of course to his fixing the actual date  
12 of sentence.

13 I assume the defendant will continue to be remanded.

14 MR. CAPERS: Yes, Judge. There are actually two  
15 other issues that we can cover for the record, Judge.

16 THE COURT: Sure.

17 MR. CAPERS: For the record, you advised the  
18 defendant that he was giving up certain rights with respect to  
19 his appeal. If you could specifically advise him that he is  
20 waiving any right to appeal any sentence of 45 years or less,  
21 I would appreciate it.

22 Q Earlier I indicated to you, Mr. Padilla, that this April  
23 24, 2000, letter agreement between your attorney and the  
24 government restricted and limited your right to appeal any  
25 sentence that was imposed. Do you recall that, sir?

1 A Yes.

2 Q More specifically, do you understand that if the sentence  
3 imposed by Judge Chin is 45 years or less, you will not be  
4 able to appeal the length of your sentence?

5 A Yes.

6 THE COURT: And the second matter?

7 MR. CAPERS: The second matter may have been covered  
8 by the court. Essentially, if you could simply advise  
9 defendant that he has the right not to plead guilty. I don't  
10 know if you covered that or not.

11 THE COURT: I think I did, but just so the record is  
12 clear.

13 Q Sir, you understand that you have the right not to plead  
14 guilty to these charges and to have a jury trial, do you not?

15 A Yes.

16 Q You do understand that?

17 A Yes.

18 MR. CAPERS: Thank you, Judge.

19 THE COURT: Anything further from either counsel?

20 MS. STERNHEIM: No, your Honor, just that the papers  
21 to probation include that I would like to be present at the  
22 interview.

23 THE COURT: I will note that.

24 MR. CAPERS: Thank you, Judge.

25 (Proceedings adjourned)

# EXHIBIT E

#61

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

97 Cr. 809 (DC)

ELADIO PADILLA,

Defendant.

-----x

August 17, 2000  
4:00 p.m.

Before:

HON. DENNY CHIN,

District Judge

APPEARANCES

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
BENNETT CAPERS,  
Assistant United States Attorney

BOBBI C. STERNHEIM, ESQ.,  
Attorney for Defendant  
666 Third Avenue  
New York, New York

1 THE CLERK: United States of America versus Eladio  
2 Padilla.

3 MR. CAPERS: Bennett Capers for the government.

4 Seated with me at counsel table is the case officer,  
5 Detective Robert Addolorato.

6 Also, Judge, just to alert you that there are a  
7 couple of other family members that viewed the victims in the  
8 courtroom who may wish to address you later.

9 THE COURT: All right.

10 Mr. Padilla, would you please rise.

11 Mr. Padilla, you pled guilty on April 24, 2000 before  
12 Magistrate Judge Maas to four counts of violent crimes in aid  
13 of racketeering and one count of use of firearms during a  
14 crime of violence. You are here to be sentenced this  
15 afternoon for those crimes.

16 Have you reviewed the presentence report and  
17 discussed it with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: Ms. Sternheim, have you reviewed the  
20 presentence report and discussed it with your client?

21 MS. STERNHEIM: Yes, I have.

22 THE COURT: The addendum, which is dated August 10,  
23 notes no objections.

24 Ms. Sternheim, do you or your client have any  
25 objections at this time?

1 MS. STERNHEIM: Your Honor, the objections that we  
2 have are not substantive in that they do not bear on the  
3 sentence that the court will impose, they are factual  
4 concerning how many brothers and sisters he has and the nature  
5 of an operation that he had. But unless the court wishes to  
6 hear those, they will not have any bearing on sentence.

7 THE COURT: I don't need to hear them. That's fine.

8 MS. STERNHEIM: Fine.

9 THE COURT: Mr. Padilla, you may be seated.

10 For the record, first of all, I have read the  
11 transcripts of the April 24 proceedings before Magistrate  
12 Judge Maas and I accept his recommendation that the pleas of  
13 guilty to the counts in question be accepted and the pleas are  
14 hereby accepted.

15 I have received from Ms. Sternheim under cover of  
16 letter dated August 16 two letters which I have read.

17 In addition I have received a letter dated August 4,  
18 2000 from Edye Serano, I received another two-page letter  
19 which is not signed which is from one of the parents of John  
20 Santos. I have read that.

21 And in addition I received a document in a folder  
22 entitled "the open wound, a personal encounter," which  
23 contains actually two different statements, and I have read  
24 them as well.

25 MR. CAPERS: Your Honor, for clarification, all of

1 those statements you referred to are from Ms. Sorano, the  
2 mother of John Santos. If you remember, that murder was the  
3 death eligible murder in this case.

4 THE COURT: All right. In any event, I have read all  
5 of them.

6 I have reviewed the presentence report. Mr. Capers,  
7 does the government have any objections to the presentence  
8 report?

9 MR. CAPERS: No, Judge.

10 THE COURT: I accept and adopt the factual recitation  
11 as set forth in the presentence report.

12 I accept and adopt the offense level determination of  
13 43, the criminal history category determination of VI. The  
14 guidelines range is life.

15 As I understand it, the statutory maximum is 45 years  
16 consisting of ten years on each of Counts 3, 5, 10 and 11 for  
17 a total of 40 years or 480 months. In addition, Count 18  
18 carries a mandatory five year consecutive sentence.  
19 Accordingly, the total sentence would be 540 months or 45  
20 years.

21 MR. CAPERS: Your Honor, I think it is 480 months if  
22 he serves.

23 THE COURT: 480 months on Counts 3, 5, 10 and 11, and  
24 then an additional 60 months on Count 18.

25 Am I missing something?

1 MR. CAPERS: I'm sorry, I guess I misheard. You are  
2 correct, it's 440 months on the first four counts, then an  
3 additional --

4 THE COURT: 480 on the first four counts?

5 MR. CAPERS: Yes.

6 THE COURT: Yes. And then 60 months -- we need to  
7 translate everything into months -- and 60 months on Count 18  
8 for a total of 540.

9 Ms. Sternheim, do you agree with that?

10 MS. STERNHEIM: Yes.

11 THE COURT: All right.

12 Why don't I let any family members who want to make a  
13 brief statement do that now and then I will let Ms. Sternheim  
14 and Mr. Padilla go.

15 Are there any family members who wish to address the  
16 court?

17 MR. CAPERS: Your Honor, first I would like to tell  
18 you who is here. That might help.

19 Marisol Sierra is the wife of Juan Rios, Sr., the  
20 individual referred to as the murder victim in Count 3.

21 Also with her is her family --

22 THE COURT: I'm sorry. Is that Amiritto --

23 MR. CAPERS: Amiritto.

24 Also her family is with her. And I believe Mercy  
25 Rios is the family member who plans on speaking first.



1           Also present is Emily Rivera, who is the niece of  
2 Jose Fernandez.

3           If you notice with respect to Count 5, the conspiracy  
4 to murder Juan Rios, Jr., also known as Chato, even though he  
5 was the target of that conspiracy, the victim who ended up  
6 being shot was Jose Hernandez and his niece is present as  
7 well.

8           THE COURT: Shot and murdered?

9           MR. CAPERS: Yes.

10          THE COURT: Ms. Rios.

11          MS. RIOS: Yes.

12          THE COURT: If you want, come forward to the  
13 microphone.

14          MS. RIOS: I just want to say that I'm -- a couple of  
15 years ago, I was about 14 years old, and I woke up in the  
16 morning, I woke up in the morning and I had to go to day camp,  
17 and my father used to take me to day camp every morning, and I  
18 looked all over the house and he was not there. I didn't know  
19 what happened. I was only 14 years old.

20                 After that day I never saw my dad again since then.  
21 He has missed two graduations, my first graduation from eighth  
22 grade. I was valedictorian and he was not there to see it.  
23 Then I went to high school. He didn't see that graduation,  
24 either.

25                 Now I'm going to college, I got a scholarship, I'm

1 going to college for free, and my father missed that, too.  
2 Soon I'm going to get married and have children and my father  
3 is not going to see that, either.

4 I just want to say that even after all that pain and  
5 anger that I have inside, even after being daddy's little  
6 girl, I forgive you. And some day in the future, when I'm  
7 very successful and I have a good job, I'm going to send you  
8 food, I'm going to send you clothes and I'm going to pray for  
9 you, because that's the way I was raised.

10 I could stand here and tell you I hate you, but I  
11 don't. I can stand here and tell you I hope you rot in hell,  
12 but I don't. I hope you live forever. And I wish you would  
13 look at me so that you remember this face. My name is Mercy  
14 Rios and I'm Mr. Rios' youngest daughter. You don't even know  
15 me, but fortunately I have had a chance to know you.

16 Thank you.

17 THE COURT: All right.

18 Ms. Rivera, did you want to say something?

19 (Pause)

20 MS. RIVERA: I just want to say that I am happy now  
21 that the murderer is in jail. He is now in peace now. The  
22 family does have closure. He has to live the rest of his life  
23 as a cruel person.

24 THE COURT: Thank you.

25 Ms. Sternheim, I will hear you now.

1 MS. STERNHEIM: As the court is well aware, in my  
2 role as the attorney for Mr. Padilla I am here to represent  
3 him, but I am very sympathetic and sorry for the loss of the  
4 family members who are here and I do express that to them.

5 Your Honor, Mr. Padilla pled guilty to the counts  
6 that the court has referred to. By doing so he has accepted  
7 the responsibility for the crimes for which he will be  
8 sentenced.

9 The sentence is governed by the presentence report in  
10 this case and the court has correctly stated that the  
11 statutory maximum is 540 months or 45 years, and I understand  
12 that that will be the sentence that the court is obligated to  
13 impose.

14 The recommendation of the Probation Department refers  
15 to the state sentence that Mr. Padilla is serving. I bring to  
16 the court's attention that the state sentence, to my  
17 knowledge, the acts committed in furtherance of that sentence,  
18 are part and parcel of the activities of the sentence before  
19 your Honor. The Probation Department has recommended that the  
20 court impose this sentence concurrently with the state  
21 sentence.

22 I urge the court to do so as well and I ask the court  
23 to impose a sentence concurrently back to the date of the  
24 arrest of Mr. Padilla on that state case because of its  
25 inextricably intertwined nature with this case.

1 Other than that, I believe that there are no other  
2 issues other than it would be my suggestion to the court that  
3 the court recommend that Mr. Padilla be enrolled in a  
4 substance abuse program while in prison, and in light of his  
5 family situation, some of which is revealed in the letters  
6 that were submitted to the court, the court is aware that his  
7 family members, his sisters and his mother, have been present  
8 each and every time Mr. Padilla has been present.

9 I would ask the court to recommend that Mr. Padilla  
10 be designated in a facility so that his family can visit with  
11 him, so I am requesting that he be designated in a facility  
12 close to New York.

13 THE COURT: All right. Thank you.

14 MS. STERNHEIM: Thank you.

15 THE COURT: Mr. Padilla, is there anything you want  
16 to say in your own behalf at this time?

17 THE DEFENDANT: No.

18 THE COURT: Mr. Padilla, please rise.

19 I have no discretion under the plea agreement and  
20 under the guidelines calculations in terms of the sentence  
21 and, accordingly, I will impose it.

22 I don't think there is really any need to add  
23 anything to what the family members of the victims said today.

24 It is hereby the judgment and sentence of this court  
25 that the defendant, Eladio Padilla shall be and hereby is

1 sentenced to a term of imprisonment of 45 years or 540 months,  
2 consisting of ten years each on Counts 3, 5, 10 and 11  
3 consecutively to each other, and in additional five years on  
4 Count 18, again, consecutively to the others.

5 In addition, I will impose a term of supervised  
6 release of three years on each count to run concurrently.

7 I will impose a fine of \$1,000 to be paid in  
8 accordance with Bureau of Prisons regulations. I understand  
9 that the presentence report states that Mr. Padilla does not  
10 have the means to pay a fine, but in the event he works in  
11 prison the fine to be paid in accordance with the regulations.

12 I will also impose the mandatory special assessment  
13 of \$250, consisting of \$50 on each count.

14 With respect to the period of supervised release, the  
15 mandatory conditions will apply. The standard conditions 1  
16 through 13 will apply. The special drug testing condition set  
17 forth on page 26 will also apply.

18 Mr. Padilla is to report to the nearest probation  
19 office within 72 hours after release from custody, and he is  
20 to be supervised by his district of residence.

21 With respect to the recommendation that this sentence  
22 run concurrently with the state sentence, I will not make that  
23 recommendation. I don't believe it is appropriate.

24 With respect to the credit, I will leave that to the  
25 Bureau of Prisons. I won't make a recommendation one way or

1 another.

2 I will recommend that the defendant, subject to  
3 security considerations, be designated to a facility, if  
4 possible, in the northeastern region of the United States and  
5 to a facility where he can participate in a substance abuse  
6 program.

7 Are there any open counts, Mr. Capers?

8 MR. CAPERS: Yes, there are, Judge. We would ask  
9 that they be dismissed at this point?

10 THE COURT: The motion is granted.

11 MR. CAPERS: Your Honor, can I have a few moments to  
12 confer with defense counsel?

13 THE COURT: Yes. I wanted to ask you, also, whether  
14 the plea agreement addresses the right to appeal so I can  
15 advise the defendant accordingly.

16 MR. CAPERS: He has waived his right to appeal the  
17 sentence.

18 THE COURT: Okay.

19 Mr. Padilla, as I understand it, you have waived your  
20 right to appeal. In the event you wish to appeal, however,  
21 and to the extent that you arguably have a right to appeal,  
22 you must do so within ten days. If you cannot afford an  
23 attorney, one will be provided for you without cost.

24 Mr. Capers, was there anything else?

25 MR. CAPERS: Your Honor, I believe that pursuant to

1 5G1.3 you do have to decide whether the sentence will be  
2 concurrent or consecutive or partially concurrent. I don't  
3 think you can leave that to the discretion of --

4 THE COURT: I wasn't intending to, I guess. I  
5 thought I was being asked to recommend it, but I was deciding  
6 that it should not be concurrent. That would be my  
7 recommendation. So let me make a decision.

8 It is hereby my decision that the sentence is to be  
9 served consecutively to the state sentence, the pending state  
10 sentence.

11 MR. CAPERS: Thank you for that clarification.

12 THE COURT: Anything else?

13 MR. CAPERS: No, Judge.

14 MS. STERNHEIM: Your Honor, on that issue, just so  
15 that the record is clear, it has been my understanding, and I  
16 would ask the court to inquire of the government if it is  
17 their understanding as well, that the conduct which is the  
18 basis of the state conviction was part of the enterprise  
19 conduct with regard to this conviction.

20 THE COURT: Mr. Capers.

21 MR. CAPERS: Your Honor, as a factual matter, what he  
22 was charged with and convicted of in the state was part of the  
23 drug crimes relating to the enterprise. What he pleaded to in  
24 the federal system was the actual crimes of violence in  
25 connection with that enterprise.

1 THE COURT: What I would like to know is whether it  
2 is a discretionary matter.

3 MR. CAPERS: Yes.

4 THE COURT: If it is a discretionary matter, then I  
5 am exercises my discretion so that the sentences are to be run  
6 consecutively.

7 If it is not a discretionary manner, of course, I  
8 will abide by what the law provides.

9 MR. CAPERS: Under subsection C of 5G1.3, it is in  
10 your discretion.

11 THE COURT: Ms. Sternheim, do you disagree with that?

12 MS. STERNHEIM: Your Honor, I believe that there are  
13 aspects of consecutive/concurrent sentencing that are purely  
14 discretionary. For instance, if an individual is serving a  
15 state sentence, the courts can decide whether to make the  
16 undischarged portion concurrent or consecutive whether or not  
17 there is a relationship to the present crime of conviction.

18 It is my understanding that when there is a  
19 relationship, as there is here, that it is a legal question as  
20 to whether by pleading guilty in full satisfaction of this  
21 indictment, although structured as it has been, the court can  
22 ignore the fact that the sentence being served for conduct  
23 occurring in the midst of this case, this case going back to  
24 the early 90s and the state sentence being in the mid-90s, I  
25 believe that it is a legal issue for the court to determine.



1           The Probation Department has analyzed this and has  
2 offered its findings with regard to that and it has stated  
3 that because of the relationship the court should impose a  
4 concurrent term of imprisonment to the undischarged period of  
5 time for the state case.

6           MR. CAPERS: Your Honor, if I may, I am looking at  
7 the third full paragraph on page 25.

8           THE COURT: Yes. I was just looking at the same  
9 thing.

10          MR. CAPERS: They are referencing the subsection C  
11 which makes it discretionary.

12          THE COURT: The way I read this paragraph is that  
13 this is the Probation Department's recommendation. The  
14 paragraph is not saying as a matter of law I am required to  
15 impose the sentences concurrently, and in looking at 5G1.3C,  
16 that section says the sentence may be imposed to run  
17 concurrently, partially concurrently or consecutively.

18          So the way I read this is that it is a discretionary  
19 matter and so my decision stands.

20          Anything else?

21          MS. STERNHEIM: Nothing further.

22          THE COURT: Mr. Padilla, good luck to you.

23

24

25

# EXHIBIT F

UNITED STATES DISTRICT COURT  
Southern District of New York

*Doc # 56*

UNITED STATES OF AMERICA  
V.

Eladio Padilla

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

Case Number: S3 97 CR 00809-001(DC)

Bobbi Sternheim  
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 3, 5, 10, 11 and 18
- pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

**DOCKETED AS #00, 1967**  
**A JUDGMENT**  
**ON** *8/31/00*

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. 1959	Violent Crimes in Aid of Racketeering Activity	07/14/1994	3,5
18 U.S.C. 1959	Violent Crimes in Aid of Racketeering Activity	11/23/1994	10
18 U.S.C. 1959	Violent Crimes in Aid of Racketeering Activity	02/26/1995	11
18 U.S.C. 924	Use of a Firearm During a Crime of Violence	02/26/1995	18

The defendant is sentenced as provided in pages 2 through 7 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) all open counts  is  are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. 057-58-4085

Defendant's Date of Birth 07/20/1970

Defendant's USM No.: 40968-054

Defendant's Residence Address:

Undomiciled

Defendant's Mailing Address:

same

MICROFILM

AUG 30 2000 -900 AM

08/17/2000

Date of Imposition of Judgment

[Redacted Signature]

Signature of Judicial Officer

Denny Chin, U.S.D.J.

Name and Title of Judicial Officer

8/24/00

Date



DEFENDANT: Eladio Padilla  
CASE NUMBER: S3 97 CR 00809-001(DC)

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total of 540 months to be served consecutively to his State sentence, consisting of:  
120 months on each of counts 3, 5, 10 and 11 to be served consecutively, to each other;  
60 months on count 18 to be served consecutively as well.

The court makes the following recommendations to the Bureau of Prisons:  
that defendant be designated to a facility in the North East region with a substance abuse program

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 \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

DEFENDANT: Eladio Padilla  
CASE NUMBER: S3 97 CR 00809-001(DC)

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years on each count to run concurrently

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

X The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Eladio Padilla  
CASE NUMBER: S3 97 CR 00809-001(DC)

**SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall participate in a program approved by the Probation Department for substance abuse, which program may include testing to determine whether defendant has reverted to the use of drugs or alcohol. The defendant shall be required to contribute to the costs of services rendered in an amount to be determined by the probation officer based on ability to pay or availability of third-party payment.

The defendant shall report to the nearest Probation office within 72 hours after release from custody.

The defendant shall be supervised by the district of residence.

DEFENDANT: Eladio Padilla  
CASE NUMBER: S3 97 CR 00809-001(DC)

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<u>Totals:</u>	\$ 250.00	\$ 1,000.00	\$

If applicable, restitution amount ordered pursuant to plea agreement . . . . . \$ \_\_\_\_\_

**FINE**

The above fine includes costs of incarceration and/or supervision in the amount of \$ \_\_\_\_\_ .

The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

- The court has determined that the defendant does not have the ability to pay interest and it is ordered that:
- The interest requirement is waived.
- The interest requirement is modified as follows:

**RESTITUTION**

The determination of restitution is deferred until \_\_\_\_\_ . An Amended Judgment in a Criminal Case will be entered after such determination.

The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

<u>Name of Payee</u>	<u>*Total Amount of loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
<u>Totals:</u>	\$ _____	\$ _____	

\* 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: Eladio Padilla  
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### SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A  In full immediately; or
- B  \$ \_\_\_\_\_ immediately, balance due (in accordance with C, D, or E); or
- C  not later than \_\_\_\_\_ ; or
- D  in installments to commence \_\_\_\_\_ days after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
- E  in \_\_\_\_\_ (e.g., *equal, weekly, monthly, quarterly*) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ year(s) to commence \_\_\_\_\_ days after the date of this judgment.

The defendant will be credited for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

The \$ 250.00 special assessment (\$50.00 on each of counts 3, 5, 10, 11 and 18) shall be paid immediately. The \$ 1,000.00 fine shall be paid in accordance with BOP regulations.

- The defendant shall pay the cost of prosecution.
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.



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### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**OR**

The court adopts the factual finding and guideline application in the presentence report except (see attachment, if necessary):

#### Guideline Range Determined by the Court:

Total Offense Level: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Imprisonment Range: \_\_\_\_\_ to \_\_\_\_\_ months

Supervised Release Range: \_\_\_\_\_ to \_\_\_\_\_ years

Fine Range: \$ \_\_\_\_\_ to \$ \_\_\_\_\_

Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$ \_\_\_\_\_

Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

Partial restitution is ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

**OR**

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons:

**OR**

The sentence departs from the guideline range:

upon motion of the government, as a result of defendant's substantial assistance.

for the following specific reason(s):