No. 25-

In the

Supreme Court of the United States

MIGUEL ANGEL DELGADO, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a court applying the Fourth Amendment's totality-of-the-circumstances framework to a prosecution under 18 U.S.C. § 242 may effectively confine its excessive-force analysis to the moments immediately surrounding the application of force while considering the broader factual context only in connection with the separate mens rea inquiry, notwithstanding this Court's rejection of temporally constrained excessive-force analysis in *Barnes v. Felix*.

2. Whether the "willfulness" element of 18 U.S.C. § 242, as construed in *Screws v. United States*, requires proof of subjective criminal culpability, or whether a conviction may instead rest on evidence probative only of objective unreasonableness, such as training violations, policy deviations, emotional demeanor, and post-incident concealment.

3. Whether the phrase "bodily injury" in 18 U.S.C. § 242 requires injury greater than *de minimis* before a misdemeanor constitutional violation may be elevated into federal felony liability.

4. Whether a conviction under 18 U.S.C. § 1519 for falsifying a use-of-force report "in contemplation" of a federal investigation may be sustained where the inference that the defendant contemplated a federal investigation depends entirely upon predicate findings of unconstitutional and willful force reached through analytically defective Fourth Amendment and *mens rea* determinations.

PARTIES TO PROCEEDING AND RELATED CASES

Parties

- Petitioner, Miguel Angel Delgado, Jr., was the Appellant and defendant in the district court.

- Respondent, United States of America, was the Appellee and plaintiff in the district court.

Related Cases

- *United States v. Delgado*, No. 24-50784, U.S. Court of Appeals for the Fifth Circuit. Judgment entered March 3, 2026.

- *United States v. Delgado*, No. 3:23-CR-466-1, U.S. District Court for the Western District of Texas. Judgment entered October 4, 2024.

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JURISDICTIONAL STATEMENT

The published Opinion of the United States Court of Appeals for the Fifth Circuit was entered on March 3, 2026. (App. 1a-15a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 242. Deprivation of rights under color of law.

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than

> one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. § 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

STATEMENT OF THE CASE[1]

Miguel Angel Delgado, Jr., a United States Customs and Border Protection ("CBP") officer, stands convicted of two counts of depriving individuals of rights under color of law in violation of 18 U.S.C. § 242, and one count of destruction, alteration, or falsification of records in a federal investigation in violation of 18 U.S.C. § 1519. The convictions arise from two separate use-of-force incidents at ports of entry along the United States-Mexico border. *United States v. Delgado*, 168 F.4th 752, 756-58 (5th Cir. 2026); App. 5a-7a.

The first incident occurred in October 2019 at the Bridge of Americas Port of Entry, where Delgado encountered Tomas Espinosa, a border crosser who had become agitated during a separate interaction with another CBP officer. *Id.* at 757; App. 6a. After Espinosa told the other agent "You come here," Delgado approached Espinosa, applied an escort hold, and took Espinosa to the ground after he appeared to take a different stance. *Id.*; App. 6a. Delgado then escorted Espinosa to a different area, where Espinosa was redirected by Delgado. *Id.*; App. 6a. When Delgado redirected Espinosa, Espinosa stumbled and he and Delgado both made contact with a door. *Id.*; App. 6a. After this incident, Espinosa reported lightheadedness, headache, dizziness, ringing in the ears, and confusion. *Id.*; App. 6a.

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1. For a more detailed recitation of the facts in this case, please refer to the Court of Appeals Opinion attached in the Appendix at 1a-15a.

The second incident occurred in June 2020 at passport control secondary, where Delgado encountered Ricardo Estrada following a verbal exchange in which Estrada stated in Spanish that "[t]his might be your house but when we get outside, that is a different story." *Delgado*, 168 F.4th at 758; App. 7a. Delgado perceived this statement by Estrada as a threat, and escorted Estrada to a secure area where he redirected Estrada into a row of plastic chairs. *Id.*; App. 7a. Estrada suffered a nose laceration as a result of this incident. *Id.*; App. 7a. Minutes after the incident, Delgado gave his supervisor a verbal account of the Estrada incident that was inaccurate, and subsequently submitted a written report that was also inaccurate. *Id.* at 758-59; App. 7a-8a.

Following a three-day bench trial in the United States District Court for the Western District of Texas, Delgado was convicted on all counts and sentenced to twenty-four months on each count, to run concurrently, followed by three-year concurrent terms of supervised release. *Id.* at 756; App. 5a. The United States Court of Appeals for the Fifth Circuit affirmed Delgado's convictions on all counts. *Id.*; App. 5a. In its analysis of the § 242 convictions, the court held that a fact-finder could have rationally found that Delgado willfully violated the suspects' constitutional rights on the basis of three factors, namely Delgado's violation of his use-of-force training, his demeanor during the incidents, and his post-incident statements to his supervisor. *Id.* at 760; App. 9a. The Fifth Circuit likewise found that a rational fact finder could have found that Delgado acted unreasonably and applied excessive force in both incidents based on its finding that neither Espinosa nor Estrada appeared to be resisting at the time that force was applied, and also based on its observation that Delgado had escalated the encounters. *Id.* at 760-63; App. 9a-12a. Finally, the Fifth Circuit sustained the § 1519 conviction on the inference that Delgado must have known that a federal investigation might follow because officers are trained to document excessive force. *Id.* at 763-64; App. 12a-13a.

Delgado contends that the Fourth Amendment predicate for the § 242 convictions was effectively evaluated through the same temporally constrained methodology this Court unanimously rejected in *Barnes v. Felix*, 605 U.S. 73 (2025). Further, the Fifth Circuit's willfulness finding for the § 242 convictions rests entirely on evidence probative of objective unreasonableness rather than subjective criminal intent as required by *Screws v. United States*, 325 U.S. 91 (1945). Additionally, the injuries sustained by both suspects were insufficient to support felony rather than misdemeanor liability under § 242. Finally, the § 1519 conviction rests on circular inferences drawn from the same allegedly unlawful-force findings used to establish the § 242 violations, rather than any independent proof that Delgado specifically contemplated a federal investigation when preparing his report. This Court's review is warranted.

REASONS FOR GRANTING THE PETITION

This case presents four significant and recurring questions of federal law arising from the criminal conviction of a United States Customs and Border Protection officer under 18 U.S.C. § 242 and 18 U.S.C. § 1519. Each question independently warrants this Court's review and reflects a systemic failure by the Fifth Circuit to apply governing constitutional and statutory standards in a manner consistent with this Court's precedents. *See* Supreme Court Rule 10(c).

In *Barnes*, this Court unanimously abrogated the Fifth Circuit's moment-of-threat rule and held that Fourth Amendment excessive-force claims require analysis of the totality of the circumstances, with no time limit on the relevant history a court must consider. *Id.* at 79-80. The decision below was issued nine months after *Barnes*, yet does not mention or cite it in its excessive-force analysis. *Delgado*, 168 F.4th at 759-63; App. 8a-12a. Despite nominally surveying the full context of the two encounters at issue, the Fifth Circuit confined its actual Fourth Amendment inquiry to the time at which Delgado escalated the encounters and the moments of physical contact in each incident, while conducting a broader contextual analysis exclusively in service of the willfulness inquiry under § 242. *Id.*; App. 8a-12a. The result is a decision that performs a totality analysis for the wrong legal question while imposing marginally wider chronological blinders upon the Fourth Amendment inquiry, effectively using the same methodology this Court rejected in *Barnes*. Without this Court's intervention, *Barnes's* unanimous rejection of the moment-of-threat rule risks becoming illusory in practice, as lower courts are enabled to satisfy its formal requirements while evading its substance. *See* Supreme Court Rule 10(c).

The decision below also deepens an entrenched and acknowledged circuit conflict over an internal inconsistency found in *Screws*, the governing authority on the willfulness element of § 242. Specifically, *Screws* requires specific intent to deprive a person of a constitutional right, but simultaneously holds that a defendant need not think in constitutional terms, an apparent inconsistency which the circuits have attempted to resolve in irreconcilably different ways. *Id*. at 103-06. A minority of circuits, most clearly the Second and Sixth, have preserved a meaningful distinction between the objective Fourth Amendment inquiry and the subjective willfulness standard. The majority, including the Ninth, Seventh, First, Eighth, Tenth, and D.C. Circuits, have increasingly sustained § 242 convictions through reasoning that substantially overlaps with the objective Fourth Amendment inquiry.

The Fifth Circuit had previously resisted this drift away from specific intent, but the decision below abandons that resistance and sustains a criminal conviction based on training violations, emotional demeanor, and post-incident concealment, which are probative of objective unreasonableness, not subjective criminal intent. *Delgado*, 168 F.4th at 759-60; App. 8a-9a. As a result, the division among the circuits is rapidly becoming a near-uniform national standard equating § 242 criminal liability with civil tort liability, which is precisely the outcome *Screws* intended to prevent. *Id*. at 104. This Court's intervention is necessary to resolve this internal inconsistency within *Screws* and the conflict among the circuits that has resulted. *See* Supreme Court Rule 10(a).

Furthermore, the circuits have fractured into three approaches to the degree of injury required to elevate a § 242 violation from a misdemeanor to a felony. The majority of circuits hold that any physical pain or discomfort, however temporary, satisfies the bodily injury enhancement. The Second Circuit maintains a narrower standard requiring injury that is at least greater than *de minimis.* The Fifth Circuit historically applied a third and distinct approach under which the injury inquiry is contextual and subjective, defined entirely by the constitutionality of the force that caused it. The decision below treated transient dizziness, confusion, ringing in the ears, and a nose laceration as automatically sufficient without analysis. Because the injury threshold under the Fifth Circuit's own standard depends entirely on an accurate constitutional predicate, the defective excessive-force analysis identified above infected the injury findings as well. An officer's exposure to federal felony prosecution should not turn on the fortuity of venue, and this three-way fracture demands this Court's resolution. *See* Supreme Court Rule 10(a).

Finally, the § 1519 conviction in this case cannot survive independently of the defective § 242 findings on which it rests. The Fifth Circuit's theory of intent depended entirely on the predicate conclusion that Delgado knew he had willfully used unconstitutional force. Because that conclusion was reached through the analytical errors identified above, the obstruction conviction inherited every defect of the predicate findings on which it depended. The errors in this case are sequential and mutually reinforcing, and partial reversal of the § 242 counts without reconsidering the § 1519 conviction would leave standing a judgment sustained not by independent proof of each element, but by a single shared factual theory distributed across multiple analytical headings. Complete reversal is the only remedy that addresses the full scope of the error below.

I. The Fifth Circuit silently reinstated the moment-of-threat rule this Court unanimously abrogated in *Barnes v. Felix* by conducting its totality-of-the-circumstances analysis exclusively in service of the *mens rea* inquiry while resolving the Fourth Amendment excessive force question by reference to the seizure itself.

The decision below illustrates a subtle but significant evasion of *Barnes v. Felix* in which the Fifth Circuit compartmentalized its analysis by invoking the broader context of the encounters solely to establish willfulness under 18 U.S.C. § 242, while temporally confining its Fourth Amendment excessive-force inquiry. In *Barnes*, this Court reaffirmed that Fourth Amendment excessive-force claims require courts to evaluate the force used "from the perspective of a reasonable officer on the scene" under a "totality of the circumstances" standard that has no time limit. *Id.* at 79-80. That inquiry encompasses not only the moment force was applied, but the full history of the interaction because earlier events may cause otherwise ambiguous conduct to appear either threatening or innocuous to a reasonable officer. *Id.* at 80-81. A court that confines its Fourth Amendment inquiry to the moments surrounding the application of force has donned the "chronological blinders" *Barnes* unanimously condemned. *Id.* at 82.

This reasonable officer inquiry is also analytically distinct from the *mens rea* inquiry required for criminal liability under 18 U.S.C. § 242. As this Court made clear in *Graham v. Connor*, 490 U.S. 386, 397 (1989), the Fourth Amendment reasonableness analysis is an exclusively objective inquiry conducted "without regard to [the officer's] underlying intent or motivation." An officer's subjective state of mind neither establishes nor defeats a Fourth Amendment violation, as "evil intentions" cannot render objectively reasonable force unconstitutional, and "good intentions" cannot render objectively unreasonable force lawful. *Id.* The critical question, therefore, is not whether the Fifth Circuit considered contextual evidence at all, but whether it considered that evidence in resolving the correct legal inquiry.

Despite *Barnes* being decided only nine months prior to its decision in this matter, the Fifth Circuit does not mention *Barnes* at all in its excessive-force analysis. *Delgado*, 168 F.4th at 759-63; App. 8a-12a. This omission is not merely formalistic, but goes to the substance of the Fifth Circuit's reasoning. On the surface, it appears that the opinion below discusses the broader context of the two incidents, but a close look at the Fifth Circuit's ruling reveals that this context was considered in connection with its examination of Mr. Delgado's mental state in determining whether he had willfully deprived the suspects in this matter of constitutional rights. *Id.* at 759-60; App. 8a-9a. In assessing willfulness, the Fifth Circuit examined the encounters in a broad and contextual manner. The court considered Delgado's training regarding the appropriate use of force, testimony that he was "yelling, cursing, and banging objects around despite being inside a secure government facility," and evidence that he allegedly attempted to conceal misconduct by providing false statements to supervisors and in written reports. *Id.*; App. 8a-9a. As discussed above, however, the analysis for willfulness is a fundamentally distinct inquiry with no bearing on the Fourth Amendment analysis.

As the Fifth Circuit turned to the Fourth Amendment question itself, however, its analysis narrowed to a temporally limited window surrounding the application of force. *Id.* at 760-63; App. 9a-12a. With respect to Espinosa, the court emphasized that "Espinosa was not resisting when Delgado redirected him and fell into the door," while relying on testimony that Delgado had "instigated and escalated the incident" only insofar as it explained why the force ultimately used was allegedly excessive. *Id.* at 761; App. 10a. Likewise, in the Estrada incident, the court concentrated on the point at which Delgado physically restrained Estrada, emphasizing testimony that Estrada "did not appear to instigate before Delgado placed his hands on Estrada." *Id.* at 762-63; App. 11a-12a.

The Fifth Circuit effectively narrowed the constitutional inquiry to when Delgado allegedly escalated the encounters, thereby imposing the same sort of temporal limitation that this Court unanimously rejected in *Barnes*. *Id.* at 760-63; App. 9a-12a. Missing from the court's Fourth Amendment analysis was any meaningful examination of the broader context surrounding the encounters, which included the operational realities of a tense border-security environment, Delgado's perception of potential threats, including the explicit threat made by Estrada, and the escalating verbal confrontations preceding the seizures. *Id.*; App. 9a-12a. Even though the analytical window in this matter extended beyond the "two seconds" at issue in *Barnes*, the methodology remained the same. *Barnes*, 605 U.S. at 78.

This analytical defect is present as to both incidents. For Espinosa, the court's constitutional analysis resolved to a single finding: he "was not resisting when Delgado redirected him and fell into the door." *Delgado*, 168 F.4th at 761; App. 10a. Likewise, for Estrada, it resolved to a single finding: he "did not appear to instigate before Delgado placed his hands on Estrada." *Id.* at 762-63; App. 11a-12a. In each instance, the arc of each encounter, including the explicit verbal threat made by Estrada, played no role in the constitutional inquiry. *Barnes* requires courts to ask how that history informed what a reasonable officer would have perceived and done, but that question was never asked as to either incident, resulting in the temporally limited methodology that *Barnes* rejected.

The Fifth Circuit's treatment of Estrada's explicit threat illustrates the defect in its analysis. The court acknowledged that Estrada told Delgado, "[t]his might be your house but when we get outside, that is a different story," and further acknowledged that Delgado perceived the statement as "a direct threat on his life." *Id.* at 762; App. 11a. Rather than analyze how that threat informed the perspective of a reasonable officer confronting a tense encounter inside a border-enforcement facility, the court considered the threat only insofar as it appeared to be contradicted by Delgado's alleged escalation of the encounter. *Id.*; App. 11a. The Fifth Circuit evaluated Delgado's actions as though he could simply and easily disengage from the encounter, rather than assessing the real-time pressures and uncertainties confronting him.

Justice Kavanaugh's concurrence in *Barnes* underscores the flaw in the Fifth Circuit's approach to Estrada's threat. Writing for four Members of the Court, Justice Kavanaugh emphasized that officers confronting rapidly evolving encounters frequently face "no particularly good or safe options," and must often make split-second decisions among multiple imperfect and potentially dangerous alternatives. *Barnes*, 605 U.S. at 88-90 (Kavanaugh, J., concurring). The Fifth Circuit's analysis, however, effectively assumed that Delgado could (and should) simply have declined to engage further with Estrada once the threat was made, without meaningfully considering the competing governmental and security interests confronting a Customs and Border Protection officer under such circumstances, which notably involve important national security concerns.

Under the logic of the Fifth Circuit's analysis, Delgado's decision to continue the encounter after perceiving a threat became evidence that the threat could not reasonably have been taken seriously in the first place. That assumption failed to account for the realities confronting Delgado in that moment, including the need for a CBP officer operating inside a federal facility to make immediate judgments about how to respond to an escalating and uncertain encounter after an explicit threat had been made. The constitutional question was not whether Delgado selected the perfect course of action in hindsight, but whether his actions were objectively reasonable in light of the tense, uncertain, and rapidly evolving circumstances confronting him at the time. *See Graham*, 490 U.S. at 396.

The Fifth Circuit's truncated analysis is particularly consequential given the border-enforcement context in which these encounters occurred. This Court has recognized that CBP officers operate in a uniquely dangerous environment implicating substantial national-security interests, and are tasked with interdicting terrorists, drug traffickers, and human smugglers while confronting powerful criminal organizations and significant volumes of illegal cross-border activity. *See Hernández v. Mesa*, 589 U.S. 93, 108-09 (2020); *Egbert v. Boule*, 596 U.S. 482, 494 (2022). Those governmental and security interests are not incidental to the Fourth Amendment analysis, but are integral to the totality of circumstances that *Barnes* requires courts to weigh against the individual interests at stake. *See Barnes*, 605 U.S. at 80; *cf. Graham*, 490 U.S. at 396. By confining the constitutional inquiry to simply the moments immediately surrounding the application of force, the Fifth Circuit abstracted Delgado's conduct from the operational reality in which it occurred, omitting the governmental interests that this Court has identified as significant in the border-enforcement context. *See Hernández*, 589 U.S. at 108-09.

Without guidance from this Court, *Barnes's* rejection of the moment-of-threat rule risks becoming largely illusory in practice. The decision below demonstrates how lower courts may nominally acknowledge the broader factual context of an encounter in service of a separate analysis while functionally confining the actual Fourth Amendment inquiry to a narrow temporal frame. This analytical compartmentalization is particularly dangerous in prosecutions under 18 U.S.C. § 242, where, as here, courts may improperly collapse the distinct inquiries of objective reasonableness and subjective criminal intent into one another. If permitted to stand, the decision below will invite lower courts to evade *Barnes* simply by discussing contextual facts elsewhere in an opinion while continuing to resolve the Fourth Amendment question through a narrowed and hindsight-driven examination of the seizure itself. This case presents an ideal vehicle for this Court to clarify that *Barnes* requires a genuine totality-of-the-circumstances inquiry directed to the Fourth Amendment issue applicable in criminal prosecutions, not merely a generalized discussion of context for unrelated analytical purposes.

II. The Fifth Circuit's decision deepens a well-recognized circuit conflict over the meaning of *Screws v. United States* by sustaining a willfulness finding based entirely on evidence probative of objective unreasonableness, collapsing the subjective specific intent § 242 requirement into an objective civil standard.

The Fifth Circuit's decision below deepens a well-recognized circuit conflict by sustaining a § 242 conviction based entirely on evidence probative of objective unreasonableness, thereby collapsing the statute's demanding subjective willfulness requirement into an objective standard that is indistinguishable from the Fourth Amendment inquiry under *Graham*. A conviction under 18 U.S.C. § 242 requires proof that the defendant acted "willfully" to deprive another of a constitutional right. This scienter element exists to save the statute from unconstitutional vagueness, preserving fair notice to law enforcement officers of the line between lawful and criminal conduct. *Screws*, 325 U.S. at 101-03. *Screws* itself, however, contains an internal conflict: the willfulness element requires specific intent, but a defendant need not be aware that his conduct violates the Constitution, and need not think in constitutional terms at all. *Id.* at 103-06. If specific intent is required, but constitutional awareness is not, what precisely must the defendant intend?

Screws offered "reckless disregard" of a constitutional requirement as a bridge between specific intent and non-requirement of constitutional labeling, but did not define it with precision, leaving the circuits to resolve the apparent paradox. *Id.* at 105. The majority of circuits have resolved this tension in a manner that progressively erodes the specific intent requirement, effectively replacing it with a standard that mirrors *Graham's* objective reasonableness. The Fifth Circuit previously resisted that drift, but the decision below marks its abandonment of that resistance, aligning it with the majority approach and deepening a conflict that now demands this Court's resolution.

A. Although *Screws* requires subjective criminal intent, most circuits have collapsed § 242 willfulness into an objective standard resembling civil liability.

18 U.S.C. § 242 makes it a federal crime for any person acting under color of law to "willfully" deprive another of rights secured by the Constitution or laws of the United States. The statute does not define "willfully," and the governing interpretive framework comes from this Court's plurality decision in *Screws*, in which the Court held that § 242's predecessor statute survived vagueness concerns only because it requires "a specific intent to deprive a person of a federal right made definite by decision or other rule of law." *Screws*, 325 U.S. at 103.

At the same time, the Court made clear that the government need not prove the defendant was "thinking in constitutional terms," and that willfulness could be satisfied where an officer acts "in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite." *Id*. at 105. *Screws* thus embedded two principles into § 242's *mens rea* requirement that exist in substantial tension: subjective intent to violate a constitutional right is required, but constitutional awareness is not. The differing ways the circuits have reconciled that tension form the basis of the conflict presented here.

The circuits have diverged in resolving the *Screws* paradox, producing two irreconcilable approaches to the willfulness element of § 242. A minority of circuits, most clearly the Second and Sixth, have maintained a meaningful distinction between the objective Fourth Amendment inquiry and the subjective willfulness standard, requiring the government to produce evidence specifically probative of the defendant's conscious awareness of wrongdoing rather than merely proof that the force used was objectively unreasonable. *See United States v. Walsh*, 194 F.3d 37, 52 (2d Cir. 1999) (keeping willfulness tied to subjective intent to invade a constitutionally protected interest); *United States v. Epley*, 52 F.3d 571, 575-76 (6th Cir. 1995) (reaffirming that conviction under § 242 requires specific intent to deprive the victim of a constitutional right, and that while the jury may infer that intent from circumstantial evidence of the defendant's conscious participation in wrongdoing, the government must prove that the defendant actually knew his conduct was unlawful).

The majority of circuits, however, have drifted toward an objective standard that effectively collapses the willfulness inquiry into the Fourth Amendment reasonableness analysis. The Ninth Circuit stated the majority position most plainly, holding that the specific intent required for an excessive force count under § 242 is simply "the intent to use more force than is necessary under the circumstances." *United States v. Reese*, 2 F.3d 870, 885 (9th Cir. 1993). That formulation substantially overlaps with the objective *Graham* inquiry because it turns primarily on whether the force used exceeded what was reasonably necessary under the circumstances, rather than on the defendant's subjective awareness that he was violating a constitutional command.

Other majority circuits have reached the same destination by different routes, permitting juries to infer willfulness from what a reasonable officer "would have known," *United States v. Pagan-Ferrer*, 736 F.3d 573, 593 (1st Cir. 2013); from what a "reasonable person would have understood" the right to require, *United States v. Bradley*, 196 F.3d 762, 769-70 (7th Cir. 1999); and from training violations, policy deviations, and subsequent inaccurate accounts of the incident without requiring proof of the defendant's subjective purpose to violate federal rights. *See United States v. Thao*, 76 F.4th 773, 777-78 (8th Cir. 2023); *United States v. Buntyn*, 104 F.4th 805, 811-12 (10th Cir. 2024); *United States v. Brown*, 934 F.3d 1278, 1296-97 (11th Cir. 2019). Under the majority approach, criminal liability under § 242 turns on an objective determination that significantly overlaps with a civil standard of liability. This overlap, however, is the result that *Screws* intended to prevent and which this Court has indicated is inappropriate in a criminal context. *See Farmer v. Brennan*, 511 U.S. 825, 836-38 (1994).

This Court's decision in *Farmer* offers persuasive guidance on what *Screws's* "reckless disregard" standard must require. Although decided in the Eighth Amendment context, the *Farmer* Court drew a categorical distinction between civil and criminal recklessness in which civil law "generally calls a person reckless who acts or (if the person has a duty to act) fails to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known," while criminal law "generally permits a finding of recklessness only when a person disregards a risk of harm of which he is aware." *Id.* at 836-37. The Court adopted the criminal law's subjective standard for the Eighth Amendment precisely because an objective standard which imposes liability based on what a defendant should have known is incompatible with a constitutional provision that requires proof of a culpable state of mind. *Id.* at 837-38.

The reasoning in *Farmer* applies with equal force to *Screws*. If *Screws's* "reckless disregard" formulation is to reconcile § 242's requirement of specific intent with the rule that an officer need not think in constitutional terms, it must require subjective awareness that the conduct is unlawful (or of a substantial risk that it is unlawful), not merely proof that a reasonable officer would have acted differently. Under any formulation faithful to both *Screws* and *Farmer*, the government must prove that the defendant was actually aware his conduct was unlawful, not merely that a reasonable officer in his position would have known better. The majority of circuits have demanded less, and the Fifth Circuit has now joined them.

B. The decision below culminates the Fifth Circuit's drift from *Screws*'s subjective standard toward an objective civil tort inquiry.

The decision below represents a departure by the Fifth Circuit away from *Screws's* subjective conception of criminal willfulness and toward the majority's incorrect objective standard. In *United States v. McRae*, 795 F.3d 471 (5th Cir. 2015), the Fifth Circuit reaffirmed that § 242 requires proof that the defendant acted "voluntarily and intentionally and with the specific intent to do something the law forbids," while further recognizing that the statute requires a "conscious purpose to do wrong and intent to deprive another of a right guaranteed by the Constitution." *Id.* at 479-80, 479 n.36. This prior approach by the Fifth Circuit preserved a meaningful distinction between objective error and subjective criminal culpability.

Conversely, the Fifth Circuit in this matter formally recited *Screws's* language, but functionally collapsed the willfulness inquiry into an objective excessive-force analysis similar to *Graham*. *See Delgado*, 168 F.4th at 759-60; App. 8a-9a. The court abandoned its standard under *McRae* and joined with the Eighth, Tenth, and Eleventh Circuits to affirm Petitioner's federal criminal conviction based on three categories of evidence: alleged violations of use-of-force training, Petitioner's angry demeanor during the encounters, and alleged post-incident concealment. *Id.*; App. 8a-9a. Each of those categories, however, is probative of objective unreasonableness, not of the subjective intent required by *Screws*. Training violations establish, at most, what a reasonable officer should have known. Evidence that an officer was angry, yelling, or aggressive may suggest poor judgment or even malice, but it does not establish that the officer subjectively intended to violate a constitutional right at the moment force was used. Finally, post-incident concealment may support an inference that an officer later feared administrative, professional, or legal consequences, but it does not necessarily establish that the officer subjectively understood at the moment force was used that he was violating a constitutional limitation.

This development substantially heightens the need for this Court's review. 18 U.S.C. § 242 is the federal government's principal criminal instrument for enforcing constitutional rights against law enforcement misconduct. *See Screws*, 325 U.S. at 98-100 (tracing § 242's origins to the Civil Rights Act of 1866 and preserving it as "one of the sanctions to the great rights which the Fourteenth Amendment was designed to secure"). When willfulness collapses into objective unreasonableness, the consequences extend far beyond any individual case, as prosecutors gain leverage to pursue criminal charges wherever a civil excessive-force claim might survive summary judgment; officers lose the fair notice that the specific-intent requirement of *Screws* was intended to provide; and the line Congress drew between criminal punishment and civil liability effectively disappears.

The decision below is an ideal vehicle to resolve these concerns. The Fifth Circuit expressly grounded its willfulness finding on training violations, emotional demeanor, and post-incident concealment, making the willfulness question cleanly presented and outcome-determinative. While the Fifth Circuit previously remained among the few courts still articulating § 242 willfulness in terms resembling traditional criminal culpability, the decision below abandons that position and the division among the circuits is now rapidly converging toward a uniform national standard that equates criminal liability under § 242 with an objective constitutional tort. This is the outcome that *Screws* intended to prevent, and this Court's intervention is necessary to restore the distinction.

III. The circuits have fractured into three divergent approaches to the degree of injury required to elevate a § 242 violation from a misdemeanor to a felony, leaving an officer's federal felony exposure to turn on the fortuity of venue rather than the content of federal law.

The opinion below passed upon the issue of whether Delgado's actions caused injuries to Espinosa and Estrada. *See United States v. Williams*, 504 U.S. 36, 41-43 (1992); *Delgado*, 168 F.4th at 760-62; App. 9a-11a. The word "bodily injury" in 18 U.S.C. § 242 marks the line Congress drew between misdemeanor and felony liability for constitutional violations, but a division among the circuits as to what that threshold requires in practice has effectively caused it to cease functioning as a uniform national standard. 18 U.S.C. § 242 establishes materially different penalty ranges depending on whether "bodily injury results" from the constitutional deprivation. The divergence among the circuits results in substantial disparities in federal criminal exposure for law enforcement officers based solely on geography.

The majority of circuits have adopted a broad conception of "bodily injury," holding that virtually any physical pain or temporary discomfort is sufficient to elevate § 242 to felony status. Under this broad approach, bodily injury may include cuts, bruises, abrasions, physical pain, or "any other injury to the body, no matter how temporary." *See United States v. Bailey*, 405 F.3d 102, 111-12 (1st Cir. 2005); *United States v. Perkins*, 470 F.3d 150, 160-61 (4th Cir. 2006); *United States v. Boen*, 59 F.4th 983, 993-94 (8th Cir. 2023); *United States v. LaVallee*, 439

F.3d 670, 687-88 (10th Cir. 2006); *United States v. Myers*, 972 F.2d 1566, 1572-73 (11th Cir. 1992).

The Second Circuit, by contrast, has maintained a materially narrower standard requiring force and resulting injury that are at least greater than *de minimis*. In *United States v. Cote*, 544 F.3d 88 (2d Cir. 2008), the court reaffirmed that the bodily-injury enhancement requires proof that the force used was not merely *de minimis*, emphasizing repeated punching, kicking, stomping, and significant head trauma in concluding that the felony enhancement properly applied. *Id*. at 100-02. The Second Circuit's approach thus preserves a meaningful limiting principle between minor or incidental physical contact and the substantially greater criminal exposure associated with federal felony liability.

The Fifth Circuit historically applied a third and distinct approach. In *United States v. Brugman*, 364 F.3d 613 (5th Cir. 2004), the court held that what constitutes a cognizable injury under § 242 is "subjective" and "defined entirely by the context in which the injury arises," because "the amount of injury necessary to satisfy our requirement of 'some injury' and establish a constitutional violation is directly related to the amount of force that is constitutionally permissible under the circumstances." *Id*. at 618-19. Under this framework, the same physical consequence may constitute a cognizable injury when force was unlawfully applied but falls below the threshold when force was constitutionally justified. *Id*. The *Brugman* injury inquiry was thus dependent upon an accurate predicate determination of whether the force used was constitutionally excessive in the first instance.

The decision below illustrates the cascading consequences of the predicate errors identified above. The Fifth Circuit's ruling treated transient dizziness, confusion, ringing in the ears, and a nose laceration as sufficient to sustain felony liability without separately analyzing whether those injuries crossed any meaningful threshold. *Delgado*, 168 F.4th at 760-62; App. 9a-11a. Under *Brugman*, the Fifth Circuit's injury inquiry is inseparable from an accurate excessive-force finding. *Id.* at 618-19. Because the court's excessive-force findings in this matter were infected by the error identified in Argument I, the predicate determination on which the injury threshold depended was itself flawed. *Brugman's* contextual framework cannot sustain felony liability when the context was never properly evaluated, and a felony conviction that rests on an injury finding tethered to a defective constitutional predicate cannot stand independently of the errors that produced it.

Even apart from the defective constitutional analysis below, however, the circuits remain fundamentally divided over what degree of injury Congress intended to separate misdemeanor from felony liability under § 242. The divergent approaches to the bodily injury threshold produce serious practical and constitutional consequences. Officers engaging in materially identical conduct may face misdemeanor exposure in circuits retaining a meaningful *de minimis* limitation while confronting felony prosecution in jurisdictions applying the broader standard. The resulting disparity undermines the uniform application of federal civil-rights law and creates substantial geographic inconsistency in the administration of federal criminal justice. This Court's intervention is necessary to establish a uniform national standard governing the degree of injury required before ordinary § 242 exposure escalates into felony punishment.

IV. The § 1519 conviction cannot stand independently of the defective § 242 findings on which it depends, because the Fifth Circuit's federal-contemplation inference was borrowed entirely from predicate findings Produced by the analytical errors identified above.

18 U.S.C. § 1519 makes it a federal crime to knowingly falsify any record "with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States . . . or in relation to or contemplation of any such matter." The statute reaches three distinct scenarios: falsification directed at a pending federal matter, falsification in contemplation of such a matter, and falsification in relation to such a matter. *United States v. Plezia*, 115 F.4th 379, 394-95 (5th Cir. 2024). Although the defendant need not know that a federal investigation is ongoing or even imminent, the statute nonetheless requires proof of a specific intent to impede a federal, as opposed to merely departmental or administrative, proceeding. *Id*. at 395. The "in contemplation" prong, as the Sixth Circuit made clear in *United States v. Kernell*, 667 F.3d 746, 755 (6th Cir. 2012), is satisfied when a defendant believed that a federal investigation directed at his conduct might begin at some point in the future.

The Fifth Circuit's § 1519 analysis rested on a single inferential chain: Delgado purportedly gave a false verbal account to his supervisor minutes after the Estrada incident; officers are trained to document excessive force before the end of every shift; Delgado accordingly knew a federal investigation might follow; and therefore his report was intended to impede that federal investigation. *Delgado*, 168 F.4th at 763-64; App. 12a-13a. That chain, however, depended substantially on the predicate finding that Delgado knew he had willfully used unconstitutional force. Logically speaking, an officer who believed he used permissible force, or even force that was unintentionally excessive, would have reason to document the incident defensively for administrative purposes without contemplating broader investigation. The Fifth Circuit never identified any evidence that Delgado's awareness of potential consequences extended beyond the departmental level, but simply assumed that awareness from its flawed § 242 findings.

As Arguments I and II establish, those findings were themselves the product of defective analysis. The Fourth Amendment excessive force conclusion was reached without applying *Barnes's* totality framework to the Fourth Amendment question, and the willfulness finding rested on evidence probative of objective unreasonableness rather than the subjective criminal *mens rea* that *Screws* requires. Because the § 1519 conviction borrowed its intent inference from both of those flawed predicate findings, it cannot stand independently. The analytical errors identified in Arguments I and II do not merely require reversal of the § 242 counts; they undermine the evidentiary foundation on which the § 1519 conviction was built.

The *Kernell* case, cited by the Fifth Circuit below, illustrates how the "in contemplation" prong is supposed to work. In *Kernell*, the defendant expressly stated in a public internet post that he had deleted files because he feared the FBI would find them. *Id.* at 756. His own words established that he specifically contemplated a federal investigation, and that he took deliberate steps to conceal evidence from a named federal agency he believed would be investigating him. *Id.* In this matter, by contrast, the court's finding of contemplation rested on nothing more than the inference that a CBP officer who documents a use-of-force incident must know that a federal criminal investigation could follow. That inference would apply to every officer who ever filed an inaccurate use-of-force report, whether or not the underlying conduct was constitutionally significant, and it eliminates any meaningful distinction between the administrative obligation to document force and the specific intent that § 1519 demands.

The cascading nature of the Fifth Circuit's errors in this matter has an important practical consequence. Because the § 1519 conviction depends on the same predicate findings that produced the defective § 242 convictions, correcting the errors identified in Arguments I and II necessarily requires revisiting the § 1519 count as well. The errors are sequential, and partial reversal of the § 242 counts without reconsidering the § 1519 conviction would leave standing a judgment that was sustained not by independent proof of specific intent to obstruct a federal investigation, but by inferences borrowed from findings that this Court's intervention will have rendered unreliable. Complete reversal and remand is the only remedy that addresses the full scope of the error below.

CONCLUSION

In consideration of the foregoing Petition, Miguel Angel Delgado, Jr., urges the Court to grant certiorari review to resolve these important questions of federal law. Petitioner respectfully requests that the Petition for Writ of Certiorari be granted, the judgment of the Fifth Circuit affirming Petitioner's conviction be vacated, and this matter be remanded for further proceedings consistent with this Court's opinion.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED MARCH 3, 2026

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-50784

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL ANGEL DELGADO, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:23-CR-466-1

Before Elrod, *Chief Judge*, and Smith and Wilson, *Circuit Judges*.

Jerry E. Smith, *Circuit Judge*:

Miguel Delgado, Jr., a U.S. Customs and Border Patrol ("CPB") officer, challenges the sufficiency of the evidence after being convicted, following a three-day bench trial in which the government presented extensive evidence, on two counts of depriving an individual of rights under color of law in violation of 18 U.S.C. § 242 and one count of destruction, alteration, or falsification of records in a federal investigation in violation of 18 U.S.C. § 1519. Delgado presented no evidence.

Although the precise facts of the events of the two incidents in question are the main contentions on appeal, we put a heavy thumb on the scale in favor of the verdict because we do not reevaluate the weight of the evidence or credibility of witnesses. Indeed, on a challenge to sufficiency, we must affirm if, after viewing the evidence and all reasonable inferences in the light most favorable to the prosecution, we conclude that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Because Delgado failed to satisfy the burden of showing that no rational factfinder could have found guilt, we affirm.

I.

The district court found that the government had proven beyond a reasonable doubt each element of the offenses contained in Counts I, II, and III of the Indictment. The court sentenced Delgado to 24 months for each count (below the guideline recommendation), to run concurrently, followed by three-year concurrent terms of supervised release.

A. Tomas Espinosa Incident

In October 2019, Delgado, while working at the Bridge of Americas Port of Entry, encountered Espinosa, who was crossing the United States-Mexico border. Although there are some allegations that Espinosa was intoxicated, he testified that he had "an alcoholic beverage" and "was not drunk or tipsy or buzzed." Espinosa became upset at another CBP officer and told the officer, "you come here," to which the officer responded for him to "come here." Delgado, who was not the primary officer engaging with Espinosa, approached Espinosa, put his hands on him to provide an escort hold, took him to the ground after he appeared to take a different stance, and handcuffed him. Delgado's supervisor Mark Ferguson testified that Espinosa was "noncompliant" in the waiting area during this initial interaction.

Delgado then escorted Espinosa to a different area, where he allegedly did not give Espinosa any instructions on where to go. Importantly, Delgado's supervisor did not assert that Espinosa was resisting when Espinosa, given Delgado's redirection, made contact with the door.[1] As a result, Espinosa got lightheaded, and his head began to hurt. Espinosa also testified that he experienced dizziness, ringing in the ears, and confusion. There is undisputed evidence regarding Espinosa's injuries.

Although Delgado avers that the force against Espinosa was not excessive, Delgado's supervisor testified that he would have intervened to stop the exchange and noted that Delgado had acted in an aggressive manner. To be sure, there is testimony from Delgado's supervisor that Espinosa resisted Delgado's attempt to handcuff him

1. It appears that Espinosa stumbled as Delgado redirected him, then both fell into the door as a result.

during their initial interaction, but an expert witness, Matthew Harvey, in comparing video evidence to written reports testified that he did not see Espinosa "acting in any way that was criminal that would justify using excessive force." The expert went further, indicating there was "no reason to go out and engage with Espinosa" and that "Delgado both instigated and escalated the incident with Espinosa." He also testified that "the video shows signs that Delgado intended to slam Espinosa into a door" and that "he did not see any indication of resistance on the part of Espinosa." Delgado's supervisor and the expert witness both agree that Delgado's behavior was not reasonable.

B. Ricardo Estrada Incident

In June 2020, Delgado had an encounter with Ricardo Estrada, who was returning from Mexico to the United States. Upon presenting himself for immigration inspection, Estrada was referred to passport control secondary, where he approached Delgado's counter. Estrada asked why the officer, who referred him to passport control, needed to yell, but Delgado told Estrada to stay home if it bothered him. After Estrada said that he would not stay home, Delgado began insisting, "This is my house" and "You are not the boss here." After a brief back and forth exchange, Delgado told Estrada to sit down "[l]ike a scolded little child" and to "[p]ut away the f--king phone." Estrada complied and sat silently in the waiting area.

Estrada remained silent and seated.[2] Then Delgado started saying "the only one who is going to lose . . . is you" and that Estrada would lose every time he crossed the border. Estrada then said to Delgado in Spanish, "[t]his might be your house but when we get outside, that is a different story." After Delgado asked whether Estrada was threatening him, Estrada reassured him that he was not. Nevertheless, Delgado called him a "f--king big mouth," then "walked from behind a barrier, opened a locked door to a secure area, and shouted at him to approach." Although Delgado perceived this to be "a direct threat on his life," he brought Estrada into a secure area without alerting another officer or checking Estrada for weapons.[3]

Complying with Delgado's request, Estrada approached, and Delgado "grabbed his arms from behind him, pushed him forward several steps," and redirected him. Delgado "twisted his arm, pressed his face into the chairs, and shouted at him as [] Estrada cried out in pain," all while Estrada protested that he was not threatening anyone. From the scuffle, Estrada suffered a nose laceration and bleed. CBP Officer Caros Valenzuela

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2. Delgado has a different version of events about this, namely that "Estrada continued to yell" after being told to sit and calm down.

3. In briefing, Delgado states that he "proceeded to call over Estrada to place him in restraints and pat him down in order to ensure that he was not carrying any weapons, and to also attempt to contact Federal Protective Services to see if anyone would be able to respond." But Delgado does not confirm whether he patted Estrada down or waited for the other officer, and it is unclear why Delgado needed Estrada to approach in the first instance if he was really ascertaining whether another officer could respond.

personally observed that Estrada had a laceration at the top of his nose and was crying. There is undisputed evidence regarding Estrada's injuries. When Valenzuela arrived on the scene, he observed Delgado yelling at Estrada and did not believe that Estrada was being unruly when Delgado pushed him against the chairs. Valenzuela did not hear Estrada threaten anyone; he heard Estrada apologizing.

Although Delgado posits that the amount of force was not excessive, expert witness Harvey testified that Delgado appeared, based on the threat level indicated by the video, to have used excessive force in handcuffing Estrada. The expert also testified that he "did not observe any threatening behavior from Estrada" and opined that "Estrada did not appear to instigate before Delgado placed his hands on Estrada." In fact, Estrada repeatedly said, throughout the interaction, that he was not threatening Delgado.

Even though the witnessing officer had a duty to intervene if he saw unnecessary or excessive force (but did not intervene here), Delgado's supervisor testified that he would have intervened to stop Delgado's escalation because it was "unnecessary." The supervisor indicated that officers are not trained to restrain a subject by putting handcuffs on him or pushing his head and face into other objects. The supervisor further stated that "Delgado's conduct was . . . unbecoming to an officer and neither reasonable nor necessary." And special agent Michael Navarro also testified that Delgado's use-of-force "did not seem reasonable and necessary."

C. Falsification of a Report

Minutes after the Estrada incident, Delgado's supervisor inquired about what had occurred, and Delgado responded with a false account. Delgado also wrote a false report about the incident,[4] which was reviewed by agents for the CBP Office of Professional Responsibility and DHS Office of Inspector General. In the report, Delgado wrote some falsehoods, namely that he turned Estrada in his chair to place him in hand restraints; however, expert witness Harvey found, on the footage, that Estrada appeared to be on his knees with his head up against the back of the chairs and the wall and was not sitting upright until he got handcuffed. Delgado wrote that Estrada kept pushing back, but the expert witness did not notice any movement to indicate that Estrada was resisting or pushing back against Delgado.

II.

Although we review the denial of a motion for judgment of acquittal *de novo*, any review of challenges to the sufficiency of the evidence is "highly deferential to the verdict." *United States v. Cervantes*, 107 F.4th 459, 465 (5th Cir. 2024). Indeed, we review "the evidence and all reasonable inferences in the light most favorable to the prosecution and to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

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4. As a general matter, officers were "trained to document any excessive use of force before the end of any shift."

A defendant seeking reversal "swims upstream." *United States v. Rodriguez*, 136 F.4th 258, 268 (5th Cir. 2025). "[I]t is not the reviewing court's role to ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." *Id.* at 265 (alteration and emphasis in original; internal quotation marks omitted). Instead, we "*must* affirm if, after viewing the evidence in the light most favorable to the prosecution, [we] conclude[] that *any* rational trier of fact could have found the essential elements of the crime beyond reasonable doubt." *Id.* at 268 (emphasis in original; internal quotation marks omitted).

A defendant has the burden to show that no rational factfinder could have found guilt. *See United States v. Waguespack*, 935 F.3d 322, 331 (5th Cir. 2019). We put "a heavy thumb on the scale in favor of the verdict." *United States v. Cabello*, 33 F.4th 281, 288 (5th Cir. 2022). Further, "[w]e do not reevaluate the weight of the evidence or . . . the credibility of the witnesses." *United States v. Fields*, 977 F.3d 358, 363 (5th Cir. 2020) (alteration in original). Importantly, "[i]t is not necessary that the evidence exclude every reasonable hypothesis of innocence; the jury is free to choose among reasonable constructions of the evidence." *Id.* (alteration in original). "And we must accept all credibility choices and reasonable inferences made by the trier of fact which tend to support the verdict." *United States v. Scott*, 70 F.4th 846, 856 (5th Cir. 2023) (internal quotation marks omitted).

III. Deprivation of Rights under Color of Law: 18 U.S.C. § 242

There is sufficient evidence to support the two counts of conviction for deprivation of rights. Such a violation "requires an individual to: 1) will-fully; 2) deprive another of a federal constitutional right; 3) under color of law." *United States v. Brugman*, 364 F.3d 613, 616 (5th Cir. 2004).

A. Under Color of Law

Delgado was acting under color of law when he used force in both instances—he was in uniform and on duty while asserting his authority as a federal officer.

B. Willfully

There is sufficient evidence that a defendant acted "willfully" when "a defendant act[s] 'in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite.'" *Id.* (quoting *Screws v. United States*, 325 U.S. 91, 105, 65 S. Ct. 1031, 89 L. Ed. 1495 (1945)). Evidence of willfulness "is usually circumstantial." *United States v. Sertich*, 879 F.3d 558, 565 (5th Cir. 2018).

There are three reasons supporting a rational finding that Delgado acted willfully. First, Delgado violated his training on the use of force.[5] Delgado was trained not to use force to ensure compliance for a subject who was not or had stopped resisting. He also received training making it clear that permissible uses of force did not include "slamming a person into a door, slamming a person into chairs, or grabbing a person's arm and jerking it up until they cry out in pain." Second, Delgado's demeanor supports the inference that he was not merely acting to enforce the law—he was "yelling, cursing, and banging objects around despite being inside a secure government facility."[6] Third, with respect to the Espinosa incident, Delgado made efforts to conceal his conduct, which he knew were likely unlawful.[7] Delgado lied to his supervisor and in a written report about the Espinosa incident.

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5. *See United States v. Hill*, 99 F.4th 1289, 1307 (11th Cir. 2024) (noting that "where [the] officer's actions so obviously violate his training on the use of force, a jury may infer that the violation was willful" and "[s]uch an inference may be stronger when a defendant repeatedly uses force exceeding that authorized by his training" (citation omitted)), *cert. denied*, 145 S. Ct. 2698 (2025).

6. *See United States v. Diaz*, 498 F. App'x 407, 413 (5th Cir. 2012) (per curiam) (holding that evidence that an officer was "'mad,' 'angry,' and 'yelling,'" while dealing with an otherwise secure scene, supported an inference of willful misconduct).

7. *See United States v. Brown*, 934 F.3d 1278, 1297 (11th Cir. 2019) (noting that an officer's "attempt[s] to conceal his actions by making false statements in his incident reports," after a pattern of constitutional violations, supported the inference that he acted willfully); *see also Sertich*, 879 F.3d a t 565 ("Willfulness may be established by . . . 'any conduct, the likely effect of which would be to mislead or to conceal.'").

C. Deprivation of a Federal Constitutional Right

Delgado violated the Fourth Amendment by using excessive force, which is defined as "'(1) an injury, which (2) resulted directly and only from the use of force that was clearly excessive to the need; and the excessiveness of which was (3) objectively unreasonable.'" *Brugman*, 364 F.3d at 616.

1. Tomas Espinosa Incident

a. Injury

There is undisputed evidence that Delgado caused Espinosa's injuries. Specifically, Espinosa became lightheaded, and his head began to hurt because Delgado redirected him and both fell into the door. Espinosa testified that he experienced dizziness, ringing in the ears, and confusion.

b. Excessive Force

There is sufficient evidence to support a finding that Delgado used excessive force on Espinosa. His supervisor testified that he would have intervened to stop the exchange and noted that Delgado had acted in an aggressive manner. Even if, according to Delgado's supervisor, Espinosa were allegedly "noncompliant" during his *initial* interaction with Delgado in the *waiting* area, Delgado escorted Espinosa to a *different* area, where he redirected him and both fell into a door at a time when Espinosa was not resisting. That evidence, viewed in the light most favorable to the government, supports a finding that force was excessive.[8]

c. Objectively Unreasonable

There is sufficient evidence to support a finding that Delgado's conduct toward Espinosa was objectively unreasonable. To be sure, there is testimony from Delgado's supervisor that Espinosa resisted Delgado's attempt to handcuff him during their *initial* interaction in the waiting area. But there are two rejoinders. One, Espinosa was not resisting when Delgado redirected him and fell into the door. Second, the testimony of Delgado's supervisor, that Espinosa was at least initially resisting, was called into question by that of expert witness Harvey, who testified that he did not witness, on the video, Espinosa "acting in any way that was criminal that would justify using excessive force." The expert went further, indicating there was "no reason to go out and engage with Espinosa" and that "Delgado both instigated and escalated the incident with Espinosa." He also testified that "the video shows signs that Delgado intended to slam Espinosa into a door" and that "he did not see any indication of resistance on the part of Espinosa."

The expert's testimony suggests that Espinosa was "at most passively resistant" throughout—any excessive

8. *See United States v. Lott*, 53 F.4th 319, 322 (5th Cir. 2022) (noting that an appellate court does not "weigh the evidence or determine the credibility of witnesses" and "view[s] all evidence in the light most favorable to the government and defer[s] to all reasonably inferences drawn by the trial court").

physical force was objectively unreasonable. [9] Despite the purported inconsistency between the testimonies about the initial interaction and related ambiguous video evidence, we must view all the evidence in the light most favorable to the government on a challenge to sufficiency of the evidence; our review is "highly deferential to the verdict." *See United States v. Cervantes*, 107 F.4th 459, 465 (5th Cir. 2024). It is notable that Delgado's supervisor and the expert witness agree that Delgado's behavior was not reasonable—Delgado's supervisor said the behavior was "neither reasonable nor necessary," and the expert witness said it was "neither reasonable [n]or appropriate."

A "rational trier of fact could have found," beyond a reasonable doubt, that Delgado willfully violated Espinosa's Fourth Amendment rights under color of law. *See id.; Brugman*, 364 F.3d at 616.

2. Ricardo Estrada Incident

a. Injury

There is undisputed evidence that Delgado caused Estrada's injuries. Delgado "grabbed [Estrada's] arms from behind him, pushed him forward several steps," and redirected him into a row of plastic chairs. While Estrada protested that he was not threatening anyone, Delgado "twisted his arm, pressed his face into the chairs, and

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9. *See Brugman*, 364 F.3d at 617 (determining that the "physical force [the defendant] used in excess . . . was objectively unreasonable" because the subject of the use of force had been "at most passively resistant").

shouted at him as [] Estrada cried out in pain." Because of Delgado's conduct, Estrada bled from a nose laceration, which Officer Caros Valenzuela personally observed.

b. Excessive Force

There is sufficient evidence to support an excessive-force finding. Although Delgado contends that the amount of force against Estrada was not excessive, expert witness Harvey testified that Delgado appeared, based on the threat level indicated by the video, to have used excessive force in handcuffing Estrada. Notably, the expert testified that he "did not observe any threatening behavior from Estrada."

Even though the witnessing officer had a duty to intervene if he saw unnecessary or excessive force but did not intervene here, Delgado's supervisor testified that he would have stopped Delgado's escalation because it was "unnecessary." The witnessing officer's lack of intervention is no conclusive indication that the force was not excessive. For one, the officer may not have intervened when he or she should have, particularly if the force was indeed excessive. Second, the force was excessive because Delgado's supervisor would have intervened to stop the "unnecessary" escalation. Third, the video evidence, viewed in the light most favorable to the government, suggests the force was excessive.[10]

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10. *See United States v. Rodriguez*, 136 F.4th 258, 268 (5th Cir. 2025) (noting that the appellate court "view[s] the evidence in the light most favorable to the prosecution").

c. Objectively Unreasonable

There is sufficient evidence to support a finding that Delgado's conduct toward Estrada was objectively unreasonable. Admittedly, it is unclear[11] whether Estrada's actions *before* being handcuffed could be described as merely "passively resistant" because he engaged in a verbal back-and-forth with Delgado during their *initial* interaction at passport control secondary. But their subsequent interaction is clearer. Delgado "walked from behind a barrier, opened a locked door to a secure area, and shouted at [Estrada] to approach."[12] Even though Delgado perceived Estrada's statement, "[t]his might be your house but when we get outside, that is a different story," as a "direct threat on his life," he brought Estrada into a secure area without alerting another officer or checking him for weapons. We view this evidence in the light most favorable to the government—if Delgado was sincerely concerned for his safety, he would not have opened a locked door to a secure area, request that someone (who he supposedly perceived to be a threat) approach, fail to pat the subject down for weapons, or

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11. The parties dispute whether "Estrada continued to yell" after being told to sit and calm down.

12. In briefing, Delgado states that he "proceeded to call over Estrada to place him in restraints and pat him down in order to ensure that he was not carrying any weapons, and to also attempt to contact Federal Protective Services to see if anyone would be able to respond." However, Delgado does not confirm whether he patted Estrada down or waited for the other officer. It strains credulity why Delgado needed Estrada *to approach* if he were ascertaining whether another officer could respond.

fail to wait for another officer, all while he was already separated by a barrier.[13]

The testimony from several witnesses supports the finding that Delgado's conduct was objectively unreasonable. For one, Officer Valenzuela arrived on the scene, encountered Delgado yelling at Estrada, and did not believe that Estrada was being unruly when Delgado pushed him against the chairs. And Valenzuela did not personally hear Estrada threaten anyone and, in fact, witnessed Estrada apologizing to Delgado while he was kneeling. Second, Delgado's supervisor made clear that officers are not trained to restrain subjects by putting handcuffs on them and pushing their heads into other objects. His supervisor went further, stating that "Delgado's conduct was . . . unbecoming to an officer and neither reasonable nor necessary." Third, expert witness Harvey opined that "Estrada did not appear to instigate before Delgado placed his hands on Estrada" and reiterated that Estrada did not threaten Delgado during the interaction. Fourth, special agent Michael Navarro testified that Delgado's use-of-force "did not seem reasonable and necessary." Similarly, a "rational trier of fact could have found," beyond a reasonable doubt, that Delgado also willfully deprived Estrada of his Fourth Amendment rights under color of law. *See Cervantes*, 107 F.4th at 465; *Brugman*, 364 F.3d at 616.

13. *See Rodriguez*, 136 F.4th at 268 (viewing the evidence in the light most favorable to the prosecution on a sufficiency challenge).

IV. Knowingly Falsifying a Record with Intent to Impede: 18 U.S.C. § 1519

There is sufficient evidence to support the conviction of falsification of a record. Such a violation occurs when a person "knowingly . . . falsifies, or makes a false entry in any record [or] document . . . with the intent to impede, obstruct, or influence the investigation or proper administration of any matter" within a federal agency's jurisdiction "or in relation to or contemplation of any such matter." 18 U.S.C. § 1519. "[T]o sustain a § 1519 conviction, the defendant need not know that the investigation is ongoing or even imminent." *United States v. Plezia*, 115 F.4th 379, 395 (5th Cir. 2024). And "[t]here is no requirement that a defendant must know that his conduct is impeding or will impede a pending investigation." *United States v. Moore*, 708 F.3d 639, 649 (5th Cir. 2013).

Section 1519 reaches:

> three instances where a defendant acts with intent to obstruct any investigation—formal or informal—within the jurisdiction of a federal agency: (1) when a defendant acts directly with respect to the investigation or proper administration of any matter, that is, a pending matter, (2) when a defendant acts in contemplation of any such matter, and (3) when a defendant acts in relation to any such matter.

Plezia, 115 F.4th at 394-95. "[T]he belief that a federal investigation directed at the defendant's conduct might begin at some point in the future satisfies the 'in contemplation' prong." *United States v. Kernell*, 667 F.3d 746, 755 (6th Cir. 2012). "Intent may, and generally must, be proven circumstantially." *United States v. Maggitt*, 784 F.2d 590, 593 (5th Cir. 1986).

Mere minutes after the Estrada incident, Delgado's supervisor inquired about what had occurred, and Delgado responded with a false account. The fact that Delgado made these false verbal statements, soon after the incident in question, is instructive, insofar as they may have influenced Delgado's subsequent falsehoods in his written report; after all, there was an incentive for Delgado to have a consistent account of the events, even if the initial (albeit verbal) account were false.[14]

Since officers were "trained to document any excessive use of force before the end of any shift," it is plausible that Delgado knew that an investigation, based on the factual predicate in the documentation, might begin at some point in the future. Otherwise, documenting any excessive use of force, at the end of every shift, would be superfluous. Delgado, at least, thought that his conduct could be investigated, so he had an incentive to hide his allegedly inappropriate conduct.[15]

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14. *See United States v. Hunt*, 526 F.3d 739, 745 (11th Cir. 2008) (noting that a jury could infer from false statements immediately after a use of force that the defendant "was aware he may have engaged in wrongful behavior and that this awareness—being close in time to the false statement—influenced the statement in the report").

15. *See United States v. Elashi*, 554 F.3d 480, 499 (5th Cir. 2008) ("[G]uilty knowledge can be inferred from false statements and attempted coverups.").

It is therefore unsurprising that Delgado wrote a false report about the incident, which was reviewed by agents for the CBP Office of Professional Responsibility and DHS Office of Inspector General. The specific falsehoods in the report are as follows: Delgado wrote that he turned Estrada in his chair to place him in hand restraints; however, expert witness Harvey found, on the footage, that Estrada appeared to be on his knees with his head up against the back of the chairs and the wall and was not sitting upright until he got handcuffed. Delgado also wrote that Estrada kept pushing back, but the expert witness did not notice any movement to indicate that Estrada was resisting or pushing back against Delgado.

A rational factfinder, considering these circumstances, could find that Delgado intended to impede a pending or completed federal investigation when he falsified his report.

AFFIRMED.

APPENDIX B — JUDGMENT IN A CRIMINAL CASE OF THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TEXAS, EL PASO DIVISION, SIGNED OCTOBER 4, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Case Number: EP:23-CR-00466-KC(1)
USM Number: 48623-510

UNITED STATES OF AMERICA

v.

MIGUEL ANGEL DELGADO, JR.

Defendant.

Signed October, 2024

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

The defendant, MIGUEL ANGEL DELGADO, JR., was represented by Eduardo N. Lerma, Sr., and Veronica Teresa Lerma.

The defendant was found guilty to the Indictment on April 30, 2024 by the Court. Accordingly, the defendant is adjudged guilty of such Counts, involving the following offenses:

Title & Section / Nature & Offense	**Offense Ended**	**Count**
18 U.S.C. 242 Deprivation of Rights Under Color of Law	June 15, 2020	One
18 U.S.C. 242 Deprivation of Rights Under Color of Law	October 20, 2019	Two
18 U.S.C. 1519 Falsification of Records in Federal Investigation	June 15, 2020	Three

As pronounced on September 26, 2024, the defendant is sentenced as provided in pages 2 through 9 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

SIGNED this 4th day of October, 2024.

/s/ Kathleen Cardone
KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of twenty four (24) months as to each of Counts One, Two, and Three. The terms to run concurrent.

The defendant shall surrender to the United States Marshal for this district or at the institution designated by the United States Bureau of Prisons before 2:00 p.m. on December 27, 2024.

RETURN

I have executed this judgment as follows:

____

____

____

____

Defendant delivered on ______________________ to __________________ at _____________________ , with a certified copy of this Judgment.

United State Marshal

By ____________________________________

Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to each of Counts One, Two, and Three. The terms to run concurrent.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special and/or additional conditions on the attached pages that have been adopted by this Court.

MANDATORY CONDITIONS

1. The defendant shall not commit another federal, state, or local crime during the term of supervision.

2. The defendant shall not unlawfully possess a controlled substance.

3. 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 on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.

4. The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection

of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

5. If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et. seq.) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.

6. If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

7. If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

8. The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.

9. The defendant shall notify the court of any material change in the defendant's economic

10. circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Appendix B

STANDARD CONDITIONS OF SUPERVISED RELEASE

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

1. The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

3. The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

4. The defendant shall answer truthfully the questions asked by the probation officer.

5. The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change

6. The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

7. The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities),

the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

13. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

14. If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

15. If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.

16. If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.

17. If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report (within 72 hours of release) in person to the nearest U.S. Probation Office.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature ______________ Date __________

SPECIAL CONDITIONS OF SUPERVISED RELEASE

X The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program may include testing and examination during and after program completion to determine if the defendant has reverted to the use of drugs. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant shall pay the cost of such treatment if financially able.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

X The defendant shall participate in anger management classes and/or cognitive behavior classes as instructed by the probation officer.

X The defendant shall participate in an educational services program and follow the rules and regulations of that program. Such programs may include high school equivalency preparation, English as a Second Language classes, and other classes designed to improve the defendant's proficiency in skills such as reading, writing, mathematics, or computer use. The defendant shall pay for the costs of the program if financially able.

X The defendant shall participate in a vocational services program and follow the rules and regulations of that program. Such a program may include job readiness training and skills development training. The defendant shall pay for the costs of the program if financially able.

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, Attn: Mail Log, Albert Armendariz, Sr. United States Courthouse, 525 Magoffin Avenue, Suite 105, El Paso, TX, 79901 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through Pay.gov (link accessible on the landing page of the U.S. District Court's Website). Your mail-in or online payment must include your case number in the exact format of DTXW323CR000466-001 to ensure proper application to your criminal monetary penalty.The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	Assessment	Restitution	Fine
TOTALS	$300.00	$500.00	$.00

AVAA Assessment*	JVTA Assessment**
$0.00	$.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of $300.00.

Fine

The fine is waived because of the defendant's inability to pay.

Restitution

The defendant shall pay restitution in the amount of $500.00 at a rate of not less than $50.00 per month. The defendant will also apply 15% percent of any annual federal and/or state income tax refund toward payment of the restitution. The defendant will not change exemptions claimed for either federal or state income tax purposes without prior notice to the supervising probation officer. The restitution shall be paid through the Clerk, U.S. District Court, for distribution to the payee(s). Payment of this sum shall begin immediately. No further payment shall be required after the sum of the amount actually paid by the defendant/participant MIGUEL ANGEL DELGADO, JR., has fully covered all the compensable injuries. **The amount of restitution will be split equally between the two victims.**

The defendant shall cooperate fully with the U.S. Attorney and the U.S. Probation Office to make payment in full as soon as possible.

The Court directs the United States Probation Office to provide personal identifier information of victims by submitting a "reference list" under seal Pursuant to E-Government Act of 2002 to the District Clerk within ten (10) days after the criminal Judgment has been entered.

Appendix B

Name of Payee	Amount of Restitution
See Reference List	$500.00