

No. \_\_\_\_\_  
IN THE  
UNITED STATES SUPREME COURT OF THE UNITED  
STATES

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ELIEZER ROSARIO-RAMOS

Petitioner

Vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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U.S. Solicitor General of the Justice Department in  
Washington D.C. 950 Pennsylvania Avenue NW,  
Washington D.C. 20530, United States

Questions presented:

- A. Whether first offender Rosario's 23-year prison sentence, that resulted from a 104.4% upward variance, is unreasonable because it was grounded on the fact that the victim was kind to Rosario.
- B. Whether first offender Rosario's 23-year prison sentence, that resulted from a 104.4% upward variance, is unreasonable as the DC gave significant weight to facts that were not supported by the record, or that were erroneous, or speculative: that the crime resulted in death.
- C. Whether first offender Rosario's 23-year prison sentence, that resulted from a 104.4% upward variance, is unreasonable because it almost reaches the 25-year maximum statutory sentence, which is the sentence that he would have received if he had murdered the victim, when he did not commit murder.

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## TO THE HONORABLE COURT:

The Petitioner, Eliezer Rosario-Ramos (“Rosario”), represented by court appointed counsel, respectfully prays and requests that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the First Circuit (“AC”) entered against him in this case.

### OPINION BELOW

The opinion of the First Circuit Court of Appeals was issued on May 28<sup>th</sup>, 2025. [Appendix (“App.”), p. 1.] The First Circuit denied rehearing on July 9<sup>th</sup>, 2025. [App., p. 17].

### PROCEEDINGS IN FEDERAL COURT

On September 12<sup>th</sup>, 2018, a grand jury returned a 2-count indictment alleging that, on or about August 15<sup>th</sup>, 2018, Appellant Rosario and his brother, Orlando Martinez-Ramos, participated in a carjacking that resulted in serious bodily injury to a person, in violation of Title 18 U.S.C. section 2119(2). Said statute provides that whoever, with the intent to cause death or serious bodily harm takes a motor

vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, if serious bodily injury results, shall be fined under this title or imprisoned not more than 25 years, or both. The codefendants were also charged with bank larceny for stealing \$1,500 from the victim's bank account using her debit card, in violation of Title 18 U.S.C. Section 2113(b).

On September 9<sup>th</sup>, 2019 Rosario entered a plea agreement pursuant to which he would plead guilty to the carjacking count and the bank larceny count would be dismissed. The plea agreement contained the following calculations of the recommended sentencing range pursuant to the United States Sentencing Guidelines("Guidelines").

Base offense level or BOL, 2B3.1(a)	+20
Use of dangerous weapon, 2B3.1(b)(2)(D)	+4
Permanent/life threatening bodily injury, 2B3.1(b)(3)(C)	+6
Physical restraint, 2B3.1(b)(4)(B)	+2

Carjacking, 2B3.1(b)(5)	+2
Vulnerable victim, 2A1.1(b)(1)	+2
Acceptance of responsibility	<u>-3</u>
Total adjusted level	33

The result was a total adjusted level of 33 for a range of 135 months to 168 months which is 11 years and 3 months to 14 years.

After due consideration of 18 USC section 3553(a) and the subsequent death of the victim nine days after the carjacking and attack, the parties stipulated a variant sentence consisting of a sentencing range of 15 years to 16 years, in which the prosecution would request the higher end, while Rosario would request the lower end.

On February 4<sup>th</sup>, 2020 the presentence investigation report was filed. Among other information, it provided that the victim died nine days after the offense took place, that according to the autopsy report from the Institute of Forensic Sciences of Puerto Rico (“IFC”), the cause of death was a pulmonary edema, a hypersensitive cardiac disease, arterial

hypertension and unstable diabetes, that a contributory factor to her death was facial and corporal trauma, and that the means of death was homicide.

Instead of using a base offense level of 20, as the parties did in the plea agreement sentence recommendation, the probation office applied the murder cross reference, at §2B3.1(c)(1), and using §2A1.1(a) determined a base offense level of 43 with a guideline imprisonment range of life. The probation office concluded that, as the statutorily authorized maximum sentence of 25 years is less than the minimum of the applicable guideline range, the guideline term of imprisonment was 25 years, or 300 months, pursuant to USSG §5G1.1(a).

On June 18<sup>th</sup>, 2001 Rosario filed his objections to the presentence investigation report which included a detailed analysis of the autopsy report. Rosario objected the murder cross-reference and argued that the cause of death was the preexisting health conditions of the victim, as identified in



the autopsy report, and, that, therefore, the cross reference did not apply. The victim's medical records showed that she suffered from hypertension for 20 years and diabetes for 10 years, which her physician had diagnosed as uncontrolled. The victim had recognized that she was not taking her medications as directed. The causes of death are all related to her preexisting health conditions. Her uncontrolled hypertension and diabetes caused her to have hypertensive cardiac disease and consequently dying from acute pulmonary edema.

Rosario, then, presented his Guideline calculation which is the same one contained in the plea agreement and argued that the recommended sentence should be in the range of 135-168 months.

On June 18<sup>th</sup>, 2021, Rosario filed his sentencing memorandum in which, pursuant to the plea agreement, he requested a sentence of 15 years of imprisonment. He stated that he was a 23-year-old father of two, a dedicated worker

and overall, a motivated individual trying to make his way through life for both his children and himself, but who, unfortunately, made a mistake that does not correspond to the type of person he is or will ever be. He stated that the crime occurred in a critical moment resulting from the separation from the mother of his children when he was 20 years old that led him to depression and drug consumption.

On June 21<sup>st</sup>, 2021 Rosario was sentenced. During sentencing the prosecutor requested a sentence of 16 years and explained that it was not possible to establish a causal relationship between the beating and the death of the victim, and, that, therefore, the murder cross reference was inapplicable. The prosecutor explained that a causal relationship was impossible to establish because of the victim's poor health at the time, that the victim received care at the hospital and that the victim was discharged before passing away nine days later.

However, the District Court (“DC”) insisted that although from the record it appeared that the victim was discharged from the hospital because she was doing well, that was not the case, and that the victim was discharged because the hospital staff was unable to submit her to surgery for the trauma because she was suffering from hypertension and high levels of insulin which needed to be stabilized before surgery and that was the reason for her discharge from the hospital, “but the medical needs were still there”. However, this statement is pure speculation, as there is no evidence on the record to support said statement.

The DC, then, stated that, even when the doctor describes the trauma caused by the beating as collateral or contributory factor, it was clear that the beating of the victim had direct consequences and exacerbated what already was a chronic condition. However, once again, this statement is pure speculation, as there is no evidence on the record to support said statement.

The DC stated that it would not apply the murder cross-reference and that the fact that it was not being applied did not mean that under relevant conduct the court could not consider that, within nine days, the victim died because of the beating and the exacerbation of her condition. However, once again, this statement is pure speculation, as there is no evidence on the record to support said statement.

The DC also stated that this was no easy case because of Rosario's youth, and repeated that the codefendants engaged in a terrible offense that had the collateral consequence of advancing, or prompting, the death of a human being. However, once again, this statement is pure speculation, as there is no evidence on the record to support said statement.

The DC stated that the testimony of the victim's granddaughter corroborated that, after the robbery, the victim could not overcome the trauma, even after taking medication. The DC stated that, under those circumstances,

it was quite clear that the diabetes or the sugar levels in blood and the hypertension would be sky rocketing. However, once again, this statement is pure speculation, as there is no evidence on the record to support said statement.

The DC, then, proceeded to go over the Guideline calculations reaching the final sentencing range of 11 years and 3 months to 14 years. The DC, then, expressly considered that Rosario was 23 years old at the time of sentencing, suffers from asthma, has two dependents, is a first-time offender, completed a GED and was employed at the time of the crime. The DC expressly considered that Rosario agreed, premeditated and planned with his brother to commit the crime at the residence of the victim, who was vulnerable, for financial benefit. The DC considered that the codefendants broke into the victim's house, threw a cloth over her face, inflicted a brutal beating on her with a pan, punched and kicked her causing trauma, fractures and hematomas in her face, thighs, back and thorax. The DC stated that appellant beat the victim while the codefendant

held her hands. The DC stated that the beating was unnecessary because the victim gave the codefendants everything that they asked her to and that the codefendants left the victim bleeding on the floor and went on a five-day shopping spree with \$1,500.00 that were taken from the victim's bank account using her debit card.

The DC stated that, in addition to the circumstances of the offense, it also had to consider the impact that this offense had on a tight community of 45 years where people live and know each other and that it came as a shock that has caused distrust and stress to the community itself.

The DC, then, stated that of the 23 findings of the autopsy report, 15 were related to the beating and discussed them in detail. The DC then stated that the victim suffered from chronic hypertension and diabetes but that she was "living a peaceful life" and stated for the third time that the present circumstances caused the exacerbation. The DC stated that the fact is that all the medical evidence on record

indicated that the beating had a collateral effect. The DC, then, repeated that, although the hospital staff had determined that the victim needed surgery for the fracture in her face, when she was discharged from the hospital the victim was still unstable, and, that, though her pressure was slightly better, her blood sugar levels were not. However, once again, this statement is pure speculation, as there is no evidence on the record to support said statement.

At this point, the DC imposed a 23-year sentence expressly stating that it had considered the following factors: the damage caused; the role of the defendant; the collateral consequences of the robbery; the premeditation, and; the seriousness of the crime. The DC, again, repeated that the event had a contributory factor and accelerated the death of the victim as reflected by the autopsy report and her medical condition.

A timely notice of appeal was filed and the First Circuit Court of Appeals (“AC”) entered its opinion on May

28<sup>th</sup>, 2025 denying the appeal. The AC considered that the Guideline calculation was not sufficiently harsh and that the variance was merited because the crime followed an act of kindness, involved gratuitous violence, and, because, although it could be a coincidence that the victim died nine days later, common sense warranted the conclusion that the death resulted from the crime.

A timely petition for rehearing was filed and denied, on July 9<sup>th</sup>, 2025. The present timely Petition for Certiorari followed.

### JURISDICTIONAL STATEMENT

The DC's jurisdiction over this criminal case was conferred by 18 U.S.C. section 1331. The First Circuit's jurisdiction over this appeal from the DC's judgment of conviction was conferred by 18 U.S.C. 3742(a), and 28 U.S.C. 1291.

The jurisdiction of this Court is invoked under 28 USC section 1254(1). On May 28<sup>th</sup>, 2025, a panel of the First



Circuit Court of Appeals, composed by Chief Judge Barron, Judge Kayatta and Judge Aframe, issued an Opinion dismissing the appeal. [Ap p., p. 1] Petitioner filed a petition for rehearing. On July 9<sup>th</sup>, 2025, the AC denied the petition for rehearing en banc. [App., p. 17] This petition is filed within 90 days of the AC's denial of the petition for rehearing en banc pursuant Rule 20.1 of this Court.

### CONSTITUTIONAL PROVISIONS AND STATUTES

United States Sentencing Guidelines, 2022 edition.

### STATEMENT OF THE CASE

The facts that are material to the consideration of the questions presented are included in the section describing the proceedings in federal court. The basis for federal jurisdiction in the court of first instance was Title 18 U.S.C. section 2119(2) and Title 18 U.S.C. Section 2113(b).

### ARGUMENTS

In Gall, this Honorable Court explained the mechanics of a sentence. It stated that a district court must give serious consideration to the extent of any departure from the Guidelines and must explain its conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications. It was also stated that in reviewing the reasonableness of a sentence outside the Guidelines range, appellate courts may, therefore, take the degree of a variance into account and consider the extent of a deviation from the guidelines. Gall v. US, 552 US 38 (2007)

This Honorable Court also stated that a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range, and that, as a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. However, this Honorable Court also stated that the Guidelines are not the only consideration, and that, after giving both parties an opportunity to argue

for whatever sentence they deem appropriate, the district court should then consider all of the §3553(a) factors to determine whether they support the sentence requested by a party. If the district court decides that an outside-Guidelines sentence is warranted, it must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.

Finally, this Honorable Court stated that, regardless of whether the sentence imposed is inside, or outside, the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard.

Title 18 U.S.C. section 2119 provides different penalties depending on the elements of the crime. When serious bodily injury results from a carjacking, the penalty is imprisonment for not more than 25 years, but when death results, the penalty is imprisonment for any number of years up to life, or both, or sentenced to death. Rosario was indicted for a carjacking that resulted in serious bodily injury.

In the plea agreement, the parties had already included a significant variance because of the subsequent death of the victim nine days after the carjacking and attack consisting of a sentencing range of 15 years to 16 years in which the prosecution would request the higher end and Rosario would request the lower end which is sufficient under the facts of the case.

Although the DC did not apply the murder guideline, the DC circumvented its own finding that the death did not result from the carjacking and found that the trauma inflicted during the robbery did cause the death of the victim and applied an upward 104% variance to reach a sentence of 23 years which is very close to the 25 years that would have resulted from the application of the murder cross-reference and very far from the guideline range of 11 years and 3 months to 14 years.

The AC confirmed that the role of the attack in expediting the victim's death warranted the 104% upward

variance. But that reasoning is wrong because the DC had adopted the prosecution's position that the death did not result from the robbery, and the autopsy report established the cause of death as the preexisting conditions of the victim. There is only one scientific cause of death and the rest is speculation. As a matter of fact, although it was a serious attack, it was not a brutal one as the victim's major trauma was a linear fracture on her finger and a linear fracture on her face. The rest of the trauma was minor. Therefore, a 104% upward variance was not warranted under this ground.

The AC mistakenly affirmed the unreasonable sentence because he had accompanied his grandfather to do work for the victim at her home and had hatched the plan to rob her after she was kind enough to give him her debit card to purchase breakfast for himself and his grandfather, and because of the gratuitous viciousness of the attack.

The AC stated in its opinion that the DC's sentencing rationale concentrated on the features of the attack that made it uniquely jarring, including how it arose, following an act of kindness and trust by the victim, and the gratuitous viciousness with which it was perpetrated, and that none of these specific factors were either inherent in his crimes of conviction or fully accounted for by the Guidelines. But the plea agreement guideline calculation included all of the relevant and material factors: (1) use of dangerous weapon, 2B3.1(b)(2)(D); permanent/life threatening bodily injury, 2B3.1(b)(3)(C); physical restraint, 2B3.1(b)(4)(B); carjacking, 2B3.1(b)(5); vulnerable victim, 2A1.1(b)(1)

The AC found that the fact, that Rosario had a personal connection with the victim because he had accompanied his grandfather to do work at her home, was not sufficiently taken into account in the Guideline calculation. But said fact is completely irrelevant. The severity of the crime has nothing to do with the previous knowledge the perpetrator had of the victim. Allowing said

variance on account of personal connection will have the effect of the imposition of lower sentences to convicts that perpetrate their crimes on strangers. Whether the perpetrator knows the victim should not be a ground for a 104% upward variance.

The AC found that the fact that Rosario had hatched the plan to rob the victim after she was kind enough to give him her debit card and PIN to purchase breakfast for himself and his grandfather warranted an upward variance. This factual scenario is not contemplated by the guidelines because it is irrelevant. Allowing said variance on account of the victim's kindness will have the effect of the imposition of lower sentences to convicts that perpetrate their crimes on strangers who are unkind. Whether the victim was kind to the perpetrator should not be a ground for a 104% upward variance.

The AC also stated that the DC outlined in detail the "brutal" and "unnecessary" nature of the attack, which

involved blindfolding, gagging, and beating of the victim with a frying pan to the point of unconsciousness. First of all, the fact that the attack was brutal is contemplated in the enhancement for permanent/life threatening bodily injury, 2B3.1(b)(3)(C). Second, the fact that the attack involved blindfolding, and gagging is contemplated under the physical restraint enhancement, 2B3.1(b)(4)(B). Third, the fact that the victim was hit with a frying pan is contemplated under the enhancement for use of dangerous weapon, 2B3.1(b)(2)(D). Finally, all violence is unnecessary, therefore, it cannot be a ground for a 104% upward variance.

The AC also considered that the "distrust and stress" that the attack had sown within the local community warranted a 104% upward departure. However, this is also irrelevant and creates a dangerous precedent as any crime will create distrust and stress in any community.

Finally, the AC observed that from his arrest up until the sentencing hearing itself, Rosario recanted and revised



his telling of the facts, first attempting "to attribute all the aggravating factors . . . to a third individual that is nonexistent," and later attempting to ascribe those same aggravating factors to his brother. However, the DC did not state a finding that Rosario-Ramos lied, nor that lying was the reason for the substantial and unreasonable upward departure. Nowhere in the transcript of the sentencing hearing is that reflected. Therefore, a 104% upward variance was not warranted under this ground.

What the sentencing hearing transcript shows is that the DC avoided an easily appealable sentence which would have resulted from the application of a cross-reference that was not applicable even by the prosecution standards but, even though it expressly stated that the cross-reference would not be applied, it sentenced Rosario to a sentence that is closer to the sentence resulting from the cross-reference than to the guideline sentence.

Rosario-Ramos' 23-year prison sentence, on a first-time offender, is the result of a 104% upward variance that led to a sentence that is almost the statutory maximum of 25 years. The 23-year sentence is 8 years, or 53.3%, higher than the lower end of the recommended plea agreement guideline range, of 15 years that already contained a variance. The 23-year sentence is 7 years, or 43.7%, higher than the higher end of the sentence recommendation in the plea agreement of 16 years. The 23-year sentence is only 2 years away from the statutory maximum sentence which is also the sentence recommended by the probation office pursuant to the mistaken guideline calculation using the murder cross-reference which the DC rejected.

Although the codefendants caused physical trauma to the victim that required medical care, they did not intend the crime to result in death and it did not result in death. However, at the time of the crime, the victim was already suffering from life threatening diseases which ultimately caused her death nine days after the crime and after she had

received medical care and had been discharged from the hospital.

The DC speculated, and erroneously found, that the victim's death was a result of the exacerbation of the victim's poor health condition when the prosecutor informed that he had no evidence to link the death to the trauma received during the crime. The AC admitted that the DC speculated when it stated that although the death of the victim could have been a coincidence, common sense (not science) was sufficient to link the death to the crime.


### CONCLUSION

The DC repeated several times that the crime contributed to the victim's death and, therefore, even though the DC stated that the cross-reference was inapplicable, the DC sentenced Rosario using the underlying reasoning of the cross-reference which is that the crime resulted in the death of the victim. The sentence is undefensible because it is

almost the same that would have resulted from a finding that Rosario had murdered the victim.

WHEREFORE, Petitioner respectfully requests that the Honorable Court grant this petition.

Respectfully Submitted, in San Juan, Puerto Rico, this  
6th day of October 2025.

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José R. Olmo Rodríguez

CA1-79544

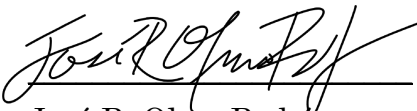
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## CERTIFICATE OF SERVICE

I, José R. Olmo-Rodríguez, court appointed counsel for the petitioner Eliezer Rosario-Ramos, hereby CERTIFY that I deposited copies of the foregoing Petition for a Writ of Certiorari, Motion for Leave to Proceed in Forma Pauperis, and the correspondent Appendix into the United States Mail, with the proper Priority Mail postage affixed, addressed to: Supreme Court of the United States, Clerk's Office, 1 First Street, NE, Washington, DC 20543; and to the U.S. Solicitor General of the Justice Department in Washington D.C. to 950 Pennsylvania Avenue NW, Washington D.C. 20530, United States.

In San Juan, Puerto Rico, this 6th day of October 2025.

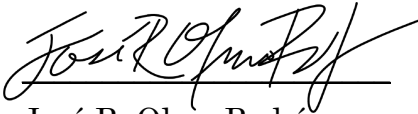
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CERTIFICATE OF COMPLIANCE

I, José R. Olmo-Rodríguez, court appointed counsel for the petitioner Eliezer Rosario-Ramos, hereby CERTIFY that this petition complies with the page limit as it contains less than 40 pages.

In San Juan, Puerto Rico, this 6th day of October 2025.

A handwritten signature in black ink, appearing to read 'José R. Olmo Rodríguez', written over a horizontal line.

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## APPENDIX

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# United States Court of Appeals For the First Circuit

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No. 21-1507

UNITED STATES OF AMERICA,

Appellee,

v.

ELIEZER ROSARIO-RAMOS,

Defendant, Appellant.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

[Hon. Aida M. Delgado-Colón, U.S. District Judge]

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Before

Barron, Chief Judge,  
Kayatta and Aframe, Circuit Judges.

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José R. Olmo-Rodríguez for appellant.

Gregory B. Conner, Assistant U.S. Attorney, with whom W. Stephen Muldrow, U.S. Attorney, and Mariana E. Bauzá-Almonte, Assistant U.S. Attorney, Chief, Appellate Division, were on brief, for appellee.

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May 28, 2025

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**KAYATTA, Circuit Judge.** After assaulting and robbing an elderly woman, Eliezer Rosario-Ramos and his brother were indicted for carjacking resulting in serious bodily injury and bank larceny. Rosario-Ramos pled guilty to the carjacking offense and proposed an upwardly variant sentence of fifteen years. Citing, among other considerations, the brutal nature of the attack and the death of the victim Zulma Lebrón-Serrano soon after, the district court sentenced Rosario-Ramos to twenty-three years. Rosario-Ramos now appeals, asserting a host of procedural and substantive defects with his sentence. We affirm.

**I.**

In August 2018, Rosario-Ramos and his grandfather were at the home of seventy-seven-year-old Lebrón-Serrano to perform some paid work. During the job, Lebrón-Serrano gave Rosario-Ramos her debit card and personal identification number (PIN) to buy himself and his grandfather breakfast. When purchasing the food, Rosario-Ramos ran Lebrón-Serrano's account balance, saw that it totaled over \$18,000, and decided to rob her.

Rosario-Ramos recruited his brother Orlando Martínez-Ramos to participate in the robbery. On the evening of August 15, 2018, the two brothers broke into Lebrón-Serrano's home, blindfolded and gagged her, beat her with a frying pan, and stole her money, some of her valuables, and her car. They then went on an extended shopping spree before being arrested by the police for

driving a stolen vehicle. Nine days after the attack, Lebrón-Serrano died. According to the medical autopsy report, the causes of her death were acute pulmonary edema, atherosclerotic and hypertensive cardiac disease, uncontrolled arterial hypertension, and uncontrolled diabetes mellitus. The autopsy report also lists facial and bodily trauma as "contributory" factors.

The following month, a federal grand jury returned a two-count indictment charging carjacking resulting in serious bodily injury and bank larceny. Rosario-Ramos pled guilty to the carjacking offense. The parties stipulated that the appropriate offense level for Rosario-Ramos translated to a sentencing range under the U.S. Federal Sentencing Guidelines of 11.25 to 14 years. But as part of his plea deal, Rosario-Ramos agreed that an upward variance was appropriate "[a]fter due consideration of the relevant factors enumerated in 18 U.S.C. § 3553(a) and the victim's death within nine days of the carjacking and attack." Rosario-Ramos proposed a sentence of fifteen years, and the government proposed a sentence of sixteen years.

The U.S. Probation Office issued a presentence investigation report (PSR), in which it concluded that the § 2B3.1(c)(1) murder cross-reference should apply, thereby increasing the Guidelines-recommended sentence to life imprisonment. See U.S.S.G. §§ 2B3.1(c)(1), 2A1.1. But recognizing that the maximum term of imprisonment for carjacking

resulting in serious bodily injury is twenty-five years, see 18 U.S.C. § 2119(2), the Probation Office recommended a sentence of twenty-five years. In his written response, Rosario-Ramos contested, among other things, the Probation Office's conclusion that the murder cross-reference should apply.

At sentencing, the district court declined to apply the murder cross-reference, citing the government's stance that it would be "difficult to establish a . . . direct causal relationship between the beating and [Lebrón-Serrano's death]." The district court noted, however, that the autopsy report made it "clear that the assault, and robbery, and the beating of the victim had direct consequences and exacerbated what already was a chronic condition." The district court found that the attack carried out by Rosario-Ramos and his brother contributed to Lebrón-Serrano's death. Thus, the court sentenced Rosario-Ramos to twenty-three years of imprisonment.

Rosario-Ramos now appeals. He argues that the district court impermissibly relied during sentencing on the assumption that Rosario-Ramos's attack on Lebrón-Serrano contributed to her death; that the district court impermissibly imposed an upward variance based on aggravating factors already contemplated by the Guidelines; and that his sentence is substantively unreasonable because it is substantially higher than his brother's and exceeds

both the Guidelines sentencing range and the already upwardly variant sentences put forth by both parties.<sup>1</sup>

We address these arguments seriatim and conclude that Rosario-Ramos's sentence is procedurally and substantively sound. As such, we affirm the district court's judgment.

## II.

Appellate review of sentencing challenges "involves a two-step pavane." United States v. Rivera-Morales, 961 F.3d 1, 15 (1st Cir. 2020). First, we evaluate the procedural soundness of the sentence; if we find no procedural error, we go on to weigh the sentence's substantive reasonableness. Id. "A sentence is procedurally sound so long as the district court did not commit a procedural error in arriving at the sentence." United States v. Rivera-Moreno, 613 F.3d 1, 8 (1st Cir. 2010); see also Gall v. United States, 552 U.S. 38, 51 (2007) (listing examples of procedural errors). And a sentence is substantively reasonable so long as it reflects "a plausible sentencing rationale and a defensible result." United States v. Martin, 520 F.3d 87, 96 (1st Cir. 2008).

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<sup>1</sup> Rosario-Ramos also contends that his sentence is so excessive as to constitute cruel and unusual punishment in violation of the Eighth Amendment. But this challenge consists of a single conclusory sentence. As such, we deem it waived for underdevelopment and do not consider it further. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

**A.**

We first address Rosario-Ramos's contention that his sentence is procedurally unfair because the district court improperly determined that the attack causally contributed to Lebrón-Serrano's death. We review the district court's rejection of this preserved objection for abuse of discretion. See United States v. Vargas-Martinez, 15 F.4th 91, 98 (1st Cir. 2021). Within the abuse-of-discretion framework, "we review a district court's factual findings for clear error." United States v. Vélez-Soto, 804 F.3d 75, 77 (1st Cir. 2015).

In formulating Rosario-Ramos's sentence, the district court found that the robbery and beating contributed to Lebrón-Serrano's death nine days after the assault. In so finding, the district court relied, in part, on the autopsy report's listing of facial and bodily trauma as "contributory" factors to the death.

Rosario-Ramos claims this reliance was error. He points to a document published on the website of the U.S. Centers for Disease Control and Prevention (CDC) addressing the use and completion of death reporting. See Nat'l Ctr. for Health Stat., U.S. Ctrs. for Disease Control & Prevention, Medical Examiners' and Coroners' Handbook on Death Registration and Fetal Death Reporting (2003), <https://perma.cc/3G4Z-ETP4>. Unhelpfully to Rosario-Ramos, the CDC report at one point advises medical examiners to list on death certificates any "significant

conditions that contributed to the death." Id. at 13. Rosario-Ramos cites to another section of the CDC document that characterizes these "other significant conditions" as diseases or conditions that "may have contributed to the death." Id. at 17 (emphasis added). Relying on this latter statement, Rosario-Ramos argues that a report averring that an event "may" have contributed to a death provides insufficient support for a finding that that event "did" so contribute.

Rosario-Ramos marshals no legal or evidentiary support for the proposition that courts should interpret the autopsy report by reference to CDC guidance. Thus, we cannot say with any confidence that the phrase "contributory factors" in the autopsy report carries the same indefinite meaning as the phrase "other significant conditions" within the CDC report. In other words, Rosario-Ramos has not established a basis for reading the word "contributory" in any way other than according to its plain and ordinary meaning.<sup>2</sup> Moreover, the record contains other evidence that buttresses the district court's finding that the attack contributed, as the word is typically understood, to Lebrón-Serrano's death. As the district court noted, most of the medical findings in the autopsy report -- which included fractures,

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<sup>2</sup> As pertinent here, Merriam-Webster defines "contributory" as "playing a part in bringing about an end or result." Contributory, Merriam-Webster, <https://perma.cc/V3UH-VAVK> (last visited Apr. 18, 2025).

contusions, and lacerations on the victim's face, thigh, and back areas -- were a direct result of the beating. The victim's relative also testified that the victim was unable to sleep at the hospital, even when medicated, and that she continued to relive the assault in ways that underscored the traumatic impact of the assault.

Certainly, it might have been a coincidence that Lebrón-Serrano died nine days after the attack, as she was awaiting surgery to address the injuries caused by the beating. But against this backdrop, we cannot say that the district court's finding that the attack contributed to Lebrón-Serrano's death gives rise to "a strong, unyielding belief that a mistake has been made." United States v. Padilla-Galarza, 990 F.3d 60, 73 (1st Cir. 2021) (quoting Cumpiano v. Banco Santander P.R., 902 F.2d 148, 152 (1st Cir. 1990)); see also United States v. Gallardo-Ortiz, 666 F.3d 808, 811 (1st Cir. 2012) ("[T]he sentencing court has wide discretion to decide whether particular evidence is sufficiently reliable to be used at sentencing." (quotation marks and citation omitted)). "When all is said and done, sentencing courts are entitled to draw common-sense inferences from the evidence adduced." United States v. Melendez-Rosado, 57 F.4th 32, 40 (1st Cir. 2023).

**B.**

Next, we consider Rosario-Ramos's argument that his upwardly variant sentence is procedurally unreasonable because it was impermissibly based on aggravating factors that were already contemplated by the Guidelines. At sentencing, the district court applied a series of sentencing enhancements for the use of a dangerous weapon; permanent or life-threatening injury suffered by Lebrón-Serrano; physical restraint of Lebrón-Serrano; carjacking; and fact that Lebrón-Serrano was a vulnerable victim. Rosario-Ramos now contends that the district court erred by proceeding to impose, in addition to these enhancements, an upwardly variant sentence that is "based on those same factors."

To begin, we disagree with the government's contention that Rosario-Ramos failed to preserve this challenge by failing to raise it below. After the district court laid down his sentence, Rosario-Ramos objected by asserting that his proposed, upwardly variant sentence already "included all the aggravating factors that we know of in this case." This objection, though brief, was specific enough "to call the district court's attention to the asserted error." United States v. Soto-Soto, 855 F.3d 445, 448 n.1 (1st Cir. 2017). We thus review for abuse of discretion.

We have held that "a sentencing court may rely on a factor that is already included in the calculation of the [Guidelines sentencing range] to impose an upward . . . variance



as long as the court articulates specifically the reasons that this particular defendant's situation is different from the ordinary situation covered by the guidelines calculation." United States v. Bruno-Campos, 978 F.3d 801, 806 (1st Cir. 2020) (cleaned up); see also United States v. Díaz-Lugo, 963 F.3d 145, 156 (1st Cir. 2020) (noting that a district court may impose an upward variance based on factors that were "considered in constructing the [Guidelines sentencing range] but not in a way that sufficiently accounts for the idiosyncrasies of a particular case"). The question before us, then, is whether the district court adequately explained why Rosario-Ramos's circumstances warrant a departure from the norm. We think it did.

At sentencing, the district court underscored the fact that Rosario-Ramos had a personal connection with Lebrón-Serrano: He had accompanied his grandfather to do work for Lebrón-Serrano at her home and had hatched the plan to rob her after she was kind enough to give him her debit card and PIN to purchase breakfast for himself and his grandfather. The court also outlined in detail the "brutal" and "unnecessary" nature of the attack, which involved blindfolding, gagging, and beating Lebrón-Serrano with a frying pan to the point of unconsciousness, even after she willingly gave up her PINs and the locations of her valuables. The court then considered the "distrust and stress" the attack had sown within the local community; the role of the attack in expediting the

victim's death; and the testimony that it had heard from one of Lebrón-Serrano's family members, who described the psychological torment that Lebrón-Serrano suffered because of the attack. Finally, the district court observed that from his arrest up until the sentencing hearing itself, Rosario-Ramos recanted and revised his telling of the facts, first attempting "to attribute all the aggravating factors . . . to a third individual that is non-existent," and later attempting to ascribe those same aggravating factors to his brother. See United States v. Reyes-Santiago, 804 F.3d 453, 467 (1st Cir. 2015) (recognizing that there is a "permissible distinction" for sentencing purposes "between [defendants] who cooperate and those who do not, and between those whose cooperation is 'prompt and full' and those whose cooperation is 'belated and grudging'" (citations omitted)).

The district court was careful and conscientious in its effort to explain why the circumstances of the offense warranted an upward variance separate and apart from the sentencing enhancements. These aggravating features are captured only in part by the enhancements, which focus on discrete and limited aspects of the offense. The district court's sentencing rationale concentrated instead on the features of the attack that made it uniquely jarring, including how it arose -- i.e., following an act of kindness and trust by Lebrón-Serrano -- and the gratuitous viciousness with which it was perpetrated. "[N]one of these

specific factors are either inherent in his crimes of conviction or fully accounted for by the [G]uidelines." United States v. Leach, 89 F.4th 189, 197-98 (1st Cir. 2023). We conclude that these idiosyncratic circumstances are sufficient to warrant a separate basis for an upward variance and thus discern no abuse of discretion in the district court's judgment.

**C.**

We turn now to Rosario-Ramos's argument that his sentence is substantively unreasonable because it is five years higher than that imposed on his brother and co-defendant, Martínez-Ramos. We note that the standard of review for a claim of substantive unreasonableness is "somewhat blurred." United States v. Ruiz-Huertas, 792 F.3d 223, 228 (1st Cir. 2015). But because Rosario-Ramos's substantive-reasonableness argument fails regardless, "we assume, favorably to the appellant, that review is for abuse of discretion." United States v. Demers, 842 F.3d 8, 14 (1st Cir. 2016).

We dispose of this issue quickly. "We have routinely rejected disparity claims" when defendants "fail to acknowledge material differences between their own circumstances and those of their more leniently punished confederates." Reyes-Santiago, 804 F.3d at 467. Such is the case here. At sentencing, the district court outlined several differences between Rosario-Ramos and his brother. Unlike his brother, Rosario-Ramos had a personal

connection with Lebrón-Serrano. Rosario-Ramos was also the one who devised the plan for the robbery, recruited his brother to assist, and then lied about who perpetrated the beating. And the district court was within its rights to consider these differences material to sentencing. We therefore cannot say that its decision to impose a harsher sentence on Rosario-Ramos amounts to an abuse of discretion.

**D.**

Finally, we address Rosario-Ramos's alternative contention that because his sentence exceeds the Guidelines sentencing range and the already upwardly variant sentences proposed by both parties, it is substantively unreasonable.<sup>3</sup> Again, "we assume, favorably to the appellant, that review is for abuse of discretion." Demers, 842 F.3d at 14.

The district court retains broad discretion in the realm of sentencing. See United States v. Politano, 522 F.3d 69, 73 (1st Cir. 2008) (emphasizing that, in the context of sentencing, "the broad discretion afforded to the district court is

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<sup>3</sup> Rosario-Ramos argues that his sentence also violates the parsimony principle. See United States v. Arsenault, 833 F.3d 24, 28 (1st Cir. 2016) (defining the parsimony principle as "the obligation to impose a sentence that is sufficient, but no greater than necessary to achieve the purposes of the law" (internal quotations omitted)). We have noted that "[a] claim that a sentence offends the parsimony principle is typically treated, for all practical purposes, as a claim that the challenged sentence is substantively unreasonable." United States v. Coombs, 857 F.3d 439, 452 (1st Cir. 2017). We treat this argument accordingly.

paramount"). The "linchpin" of whether a sentence is substantively reasonable is the existence of "a plausible sentencing rationale and a defensible result." Martin, 520 F.3d at 96. Under this deferential standard, we may reverse the district court on the grounds of substantive unreasonableness "if -- and only if -- the sentencing court's ultimate determination falls outside the expansive boundaries of [the] universe [of reasonable sentences]." Id. at 92. If a district court decides to depart from the Guidelines sentencing range, it "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." Gall, 552 U.S. at 50.

There is no doubt that Rosario-Ramos's sentence is steep. His sentence of twenty-three years is nine years above the maximum Guidelines-recommended sentence of fourteen years, and seven years above the upwardly variant sentence of sixteen years that the government proposed. Even so, the bar for finding that a sentence is substantively unreasonable is high. As we detailed above, the district court explained at length the aggravating factors of the offense that plausibly justified an upward variance. The district court considered, too, mitigating factors under 18 U.S.C. § 3553(a), including Rosario-Ramos's age, dependents, and educational and professional background. Still, it determined that several elements of Rosario-Ramos's offense were grievous

enough to justify a significant upward departure from the Guidelines sentencing range. Affording, as we must, due deference to the district court's weighing of factors, we are persuaded that the district court's justification was "sufficiently compelling" to support the upward variance, Gall, 552 U.S. at 50, and that the district court's rationale was at least "plausible," Martin, 520 F.3d at 96.

Nor can we say that Rosario-Ramos's sentence is substantively indefensible. We have upheld similarly dramatic upward variances before. See, e.g., Gallardo-Ortiz, 666 F.3d at 810, 812, 818 (sentence that was 146% of the maximum Guidelines-recommended sentence); United States v. Scherrer, 444 F.3d 91, 92, 95 (1st Cir. 2006) (en banc) (sentence that was 152% of the maximum Guidelines-recommended sentence); Díaz-Lugo, 963 F.3d at 150, 158 (sentence that was 162% of the maximum Guidelines-recommended sentence). But see United States v. Zapete-Garcia, 447 F.3d 57, 58-61 (1st Cir. 2006) (invalidating, as substantively unreasonable for lack of adequate explanation, a sentence that was 800% of the maximum Guidelines-recommended sentence). Rosario-Ramos's sentence, viewed against this case law and considered alongside the district court's sentencing rationale, does not exceed "the expansive boundaries of [the] universe [of reasonable sentences]." Martin, 520 F.3d at 92. "The fact that [this] court might reasonably have concluded that a different sentence was

appropriate is insufficient to justify reversal of the district court." Gall, 552 U.S. at 51. Because the district court's rationale for its sentence is at the very least "plausible," and the sentencing outcome "defensible," we decline to disturb its judgment. Martin, 520 F.3d at 98.

**III.**

For the foregoing reasons, we affirm the district court's judgment.

# United States Court of Appeals For the First Circuit

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No. 21-1507

UNITED STATES OF AMERICA,

Appellee,

v.

ELIEZER ROSARIO-RAMOS,

Defendant, Appellant.

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## JUDGMENT

Entered: May 28, 2025

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The district court's judgment is affirmed.

By the Court:

Anastasia Dubrovsky, Clerk

cc: Jenifer Yoiss Hernandez-Vega, Timothy R. Henwood, Mariana E. Bauza Almonte, Juan Carlos Reyes-Ramos, Jonathan L. Gottfried, Gregory Bennett Conner, Jose Ramon Olmo-Rodriguez



# United States Court of Appeals For the First Circuit

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No. 21-1507

UNITED STATES OF AMERICA,

Appellee,

v.

ELIEZER ROSARIO-RAMOS,

Defendant - Appellant.

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Before

Barron, Chief Judge,  
Kayatta, Gelpí, Montecalvo, Rikelman, and Aframe  
Circuit Judges.

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## ORDER OF COURT

Entered: July 9, 2025

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Jenifer Yois Hernández-Vega, Timothy R. Henwood, Mariana E. Bauzá Almonte, Juan Carlos Reyes-Ramos, Jonathan L. Gottfried, Gregory Bennett Conner, José Ramon Olmo-Rodríguez, Eliezer Rosario-Ramos

## UNITED STATES DISTRICT COURT

District of Puerto Rico

UNITED STATES OF AMERICA

v.

Eliezer ROSARIO-RAMOS

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 3: CR 18-578-02 (ADC)

USM Number: 52111-069

Leonardo Aldridge, Esq.

Defendant's Attorney

**THE DEFENDANT:**☒ pleaded guilty to count(s) One (1) of the Indictment, plea entered on 10/21/2019.☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18: USC § 2119(2) and 2	Carjacking with serious bodily injury; aiding and abetting.	8/15/2018	One (1)

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) remaining ☒ is ☐ are dismissed on the motion of the United States.

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

6/21/2021

Date of Imposition of Judgment

S/Aida M. Delgado-Colón

Signature of Judge

Aida M. Delgado-Colón, U.S. District Judge

Name and Title of Judge

6/21/2021

Date

DEFENDANT: Eliezer ROSARIO-RAMOS  
CASE NUMBER: 3: CR 18-578-02 (ADC)

## IMPRISONMENT

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

Two hundred and seventy-six (276) months.

☒ The court makes the following recommendations to the Bureau of Prisons:

Be afforded to participate in a drug rehabilitation treatment program; receive a psychological evaluation and treatment, if necessary; participate in vocational training, pursue employment opportunities and courses of English as a second language. Court recommends defendant be designated to serve his sentence at a facility located in Pennsylvania. Court recommends defendant not be designated to serve his sentence along with his siblings: co-defendant Orlando Miguel Martinez-Ramos and brother Miguel Angel Martinez-Ramos in CR. 14-0195-01 (FAB).

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

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

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Eliezer ROSARIO-RAMOS

CASE NUMBER: 3: CR 18-578-02 (ADC)

**SUPERVISED RELEASE**

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

Five (5) years.

**MANDATORY CONDITIONS**

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

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

DEFENDANT: Eliezer ROSARIO-RAMOS

CASE NUMBER: 3: CR 18-578-02 (ADC)

**STANDARD CONDITIONS OF SUPERVISION**

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

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

**U.S. Probation Office Use Only**

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

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: Eliezer ROSARIO-RAMOS  
CASE NUMBER: 3: CR 18-578-02 (ADC)

### SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not commit another Federal, state, or local crime, and shall observe the standard conditions of supervised release recommended by the United States Sentencing Commission and adopted by this Court.
2. The defendant shall not unlawfully possess controlled substances.
3. The defendant shall refrain from possessing firearms, destructive devices, and other dangerous weapons.
4. The defendant shall participate in an approved mental health treatment program for evaluation and/or treatment services determination. If deemed necessary, the treatment will be arranged by the officer in consultation with the treatment provider; the modality, duration, and intensity of treatment will be based on the risks and needs identified. The defendant will contribute to the costs of services rendered by means of co-payment, based on his ability to pay or the availability of third party payment.
5. The defendant shall cooperate in the collection of a DNA sample as directed by the Probation Officer, pursuant to the Revised DNA Collection Requirements, and Title 18, U.S. Code Section 3563(a)(9).
6. Defendant shall submit his person, property, house, vehicle, papers, computers (as defined in 18 U.S.C. Section 1030 (e)(1)), other electronic communication or data storage devices, and media, to a search conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
7. The defendant shall participate in an approved substance abuse monitoring and/or treatment services program. The defendant shall refrain from the unlawful use of controlled substances and submit to a drug test within fifteen (15) days of release; thereafter, submit to random drug testing, no less than three (3) samples during the supervision period and not to exceed 104 samples per year accordance with the Drug Aftercare Program Policy of the U.S. Probation Office approved by this Court. If deemed necessary, the treatment will be arranged by the officer in consultation with the treatment provider. The defendant is required to contribute to the cost of services rendered (co-payment) in an amount arranged by the Probation Officer based on the ability to pay or availability of third party payment.

The Court finds that the conditions imposed are reasonably related to the offense of conviction and to the sentencing factors as set forth in Title 18, U.S.C. § 3553 are consistent with the pertinent policy statements issued by the Sentencing Commission pursuant to Title 28, U.S.C. § 994(a).

Having considered defendant's financial condition, a fine is not imposed.

A special monetary assessment in the amount of \$100 is imposed, however, as required by law.

DEFENDANT: Eliezer ROSARIO-RAMOS  
CASE NUMBER: 3: CR 18-578-02 (ADC)

**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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<b>TOTALS</b>	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

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

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

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

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

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

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

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

DEFENDANT: Eliezer ROSARIO-RAMOS  
CASE NUMBER: 3: CR 18-578-02 (ADC)

### SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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