

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION

UNITED STATES OF AMERICA

§ **JUDGMENT IN A CRIMINAL CASE**

v.

§

§

§ Case Number: **1:22-CR-00115-MAC-CLS(5)**

RODNEY IGNACIO CASTRO

§ USM Number: **32017-510**

§ **Kent A. Schaffer**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the Indictment
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(A) Conspiracy to Possess with Intent to Distribute and Distribution of Cocaine HCl

Offense Ended

07/18/2022

Count

1


The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- There are no counts remaining as to this defendant.

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.

September 10, 2024

Date of Imposition of Judgment



Signature of Judge

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

9/11/24
Date

DEFENDANT: RODNEY IGNACIO CASTRO
CASE NUMBER: 1:22-CR-00115-MAC-CLS(5)

IMPRISONMENT

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

210 months.

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

Court recommends the defendant serve the term of imprisonment at FCI Bastrop, if eligible.

Court recommends the defendant receive appropriate drug treatment while imprisoned.

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: RODNEY IGNACIO CASTRO
CASE NUMBER: 1:22-CR-00115-MAC-CLS(5)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall 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 which 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 additional conditions on the attached page.

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STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

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SPECIAL CONDITIONS OF SUPERVISION

You must provide the probation officer with access to any requested financial information for purposes of monitoring your efforts to obtain and maintain lawful employment.

You must participate in a program of testing and treatment for substance abuse and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. The defendant must pay any cost associated with treatment and testing.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$100.00	\$.00	\$.00	\$.00	\$.00

- The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- 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 the schedule of payments page 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.

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SCHEDULE OF PAYMENTS

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

- A Lump sum payments of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance 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 20 (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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

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DENIAL OF FEDERAL BENEFITS
(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

- ineligible for all federal benefits for a period of five (5) years.
- ineligible for the following federal benefits for a period of *(specify benefit(s))*

OR

- Having determined that this is the defendant’s third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

- be ineligible for all federal benefits for a period of
- be ineligible for the following federal benefits for a period of *(specify benefit(s))*
- successfully complete a drug testing and treatment program.
- perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

APPENDIX B

United States Court of Appeals
for the Fifth Circuit

No. 24-40621

United States Court of Appeals
Fifth Circuit

FILED

November 25, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RODNEY IGNACIO CASTRO,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:22-CR-115-5

Before SMITH, DENNIS, and RICHMAN, *Circuit Judges.*

PRISCILLA RICHMAN, *Circuit Judge:*

Rodney Ignacio Castro pleaded guilty to conspiracy to possess with intent to distribute and distribution of a controlled substance in violation of 21 U.S.C. §§ 846 and 841(a)(1). Castro admitted that he used an apartment in downtown Houston “in furtherance of his drug trafficking activities.” A closet inside the apartment contained a handgun along with \$1,050,086 in United States currency and jewelry worth approximately \$1.25 million that “were the proceeds” of Castro’s drug trafficking. The district court applied two sentencing enhancements, increasing Castro’s offense level by two levels under U.S.S.G. § 2D1.1(b)(1) because “a dangerous weapon (including a

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firearm) was possessed”¹ and two levels under § 2D1.1(b)(12) because Castro “maintained a premises for the purpose of manufacturing or distributing a controlled substance.”² Castro appealed, arguing neither enhancement applies because no evidence indicated drugs or drug paraphernalia were ever in the apartment. We affirm.

I

This case arises out of an investigation of a drug trafficking organization operating in several cities in eastern Texas. Through the investigation, agents identified multiple individuals involved in the trafficking conspiracy, including Castro. Cargo was the supplier of cocaine to the conspiracy. The investigation linked Castro to an apartment in downtown Houston.

Officers executed a search warrant at the apartment. During the search, they located a suitcase in the closet containing valuables, namely \$1,050,860 in United States currency and assorted jewelry worth roughly \$250,000. Officers also located a gold-plated handgun that was unloaded and inside a gun case on the top shelf of the closet.

A grand jury indicted Castro for “[c]onspiracy to [p]ossess with the intent to distribute, and distribution of a Controlled Substance” in violation of 21 U.S.C. §§ 846 and 841(a)(1). Castro pleaded guilty. In the factual basis for his plea, Castro admitted the valuables “were the proceeds of [his] cocaine trafficking enterprise.” Castro further admitted that he possessed the handgun and that he used the apartment “in furtherance of his drug trafficking activities.”

¹ U.S.S.G. § 2D1.1(b)(1).

² U.S.S.G. § 2D1.1(b)(12).

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The presentence report (PSR) found Castro was responsible for 39.05 kilograms of cocaine and calculated a base offense level of 32. The PSR then applied a two-level enhancement under U.S.S.G. § 2D1.1(b)(1) because “a dangerous weapon (including a firearm) was possessed,”³ and another two-level enhancement under § 2D1.1(b)(12) because Castro “maintained a premises for the purpose of manufacturing or distributing a controlled substance.”⁴ Both enhancements were based on the apartment where officers found the handgun and valuables. After a three-level decrease for acceptance of responsibility, Castro’s total offense level was 33. With a criminal history category of III, his advisory sentencing range was 168-210 months according to the PSR.

Castro objected to both enhancements, arguing the firearm enhancement should not apply because the handgun “was not located where drugs or drug paraphernalia were stored.” He also asserted that the premises enhancement should not apply because “no manufacturing, drugs or drug trafficking materials were located there when the property was searched.” The district court overruled both objections. With respect to the firearm enhancement, the court reasoned that the handgun was “next to the proceeds.” In applying the premises enhancement, the court relied on Castro’s admission that he used the apartment “in furtherance of his drug trafficking activities.”

The district court imposed a sentence of 210 months of imprisonment. The court stated that to the extent the advisory range was “incorrectly calculated, the Court would have imposed the same sentence without regard

³ *Id.* § 2D1.1(b)(1).

⁴ *Id.* § 2D1.1(b)(12).

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to the applicable guideline range in light of the factors set forth in 18 U.S.C. § 3553(a).” Castro appealed.

II

We “review[] the district court’s ‘interpretation or application of the Sentencing Guidelines de novo and its factual findings for clear error.’”⁵ The district court’s application of §§ 2D1.1(b)(1) and (b)(12) are “factual finding[s] reviewed for clear error.”⁶ “Clear error exists ‘if, on the entire evidence, we are left with a “definite and firm conviction” that a mistake has been committed.’”⁷ However, we must affirm if the sentencing “objection raises no more than harmless error.”⁸

Castro argues our review must be de novo because “[t]he facts used to support both enhancements remain undisputed.” Castro relies on *United States v. Zapata-Lara*.⁹ There, we concluded that the defendant’s argument did “not concern the specifics of the factfinding, but, rather, whether the facts found are legally sufficient to support the enhancement,” making “[o]ur review . . . de novo.”¹⁰ But *Zapata-Lara* “involved a peculiar situation

⁵ *United States v. Sinclair*, 16 F.4th 471, 474 (5th Cir. 2021) (quoting *United States v. Trujillo*, 502 F.3d 353, 356 (5th Cir. 2007)).

⁶ *United States v. Le*, 126 F.4th 373, 378 (5th Cir. 2025) (“A district court’s application of § 2D1.1(b)(12) is a factual finding reviewed for clear error.” (quoting *United States v. Guzman-Reyes*, 853 F.3d 260, 263 (5th Cir. 2017))); *United States v. King*, 773 F.3d 48, 52 (5th Cir. 2014) (“The district court’s determination that § 2D1.1(b)(1) applies is a factual finding reviewed for clear error.” (quoting *United States v. Ruiz*, 621 F.3d 390, 396 (5th Cir. 2010))).

⁷ *United States v. Galicia*, 983 F.3d 842, 843-44 (5th Cir. 2020) (quoting *United States v. Marquez*, 685 F.3d 501, 508 (5th Cir. 2012)).

⁸ *United States v. Giglio*, 126 F.4th 1039, 1047 (5th Cir. 2025).

⁹ 615 F.3d 388 (5th Cir. 2010).

¹⁰ *Id.* at 390.

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where the district court did not make any finding at all about whether the defendant personally possessed the firearm or a coconspirator foreseeably possessed it.”¹¹ “In contrast, here, it is completely clear that the district court applied the enhancement based on [Castro’s] personal possession of the firearm.”¹² We therefore conclude *Zapata-Lara* is distinguishable and review for clear error.

A

We begin with the firearm enhancement. Under U.S.S.G. § 2D1.1(b)(1), “a two-offense-level enhancement should be applied to a defendant convicted of conspiracy to possess with intent to distribute a controlled substance ‘[i]f a dangerous weapon (including a firearm) was possessed.’”¹³ “For the enhancement to apply, the Government must first prove by a preponderance of the evidence that the defendant possessed the firearm.”¹⁴ “The Government can prove possession”¹⁵ of the firearm “by showing that a temporal and spatial relation existed between the weapon, the drug trafficking activity, and the defendant.”¹⁶ “Under this standard, the Government must show that ‘the weapon was found in the same location where drugs or drug paraphernalia are stored or where part of the transaction

¹¹ *King*, 773 F.3d at 52; see also *United States v. Sinclair*, 16 F.4th 471, 475 (5th Cir. 2021) (applying de novo review because “like *Zapata-Lara*, ‘we cannot be sure what rationale the court had in mind to support the [§ 2D1.1(b)(1)] enhancement’” (alteration in original) (quoting *Zapata-Lara*, 615 F.3d at 391)).

¹² *King*, 773 F.3d at 52.

¹³ *Id.* at 53 (alteration in original) (quoting U.S.S.G. § 2D1.1(b)(1)).

¹⁴ *Id.*

¹⁵ *Sinclair*, 16 F.4th at 475.

¹⁶ *Id.* (quoting *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764-65 (5th Cir. 2008)).

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occurred.’”¹⁷ “If the Government meets that burden, the burden shifts to the defendant to show that it was clearly improbable that the weapon was connected with the offense.”¹⁸

The handgun “was possessed by” Castro, and it was found in the closet of an apartment used “in furtherance of [Castro’s] drug trafficking activities” next to money and jewelry that “were the proceeds of [Castro’s] cocaine trafficking enterprise.” Given these facts, the Government established a “temporal and spatial relation . . . between the weapon, the drug trafficking activity, and the defendant,” and it is not “clearly improbable that the weapon was connected with the offense.”¹⁹

Castro argues “for the firearm enhancement to apply, the firearm must have been found in the same location where drugs or drug paraphernalia were stored, or where drug transactions occurred.” He contends this means the enhancement is inapplicable here because “[n]o drugs were found in the apartment[, n]o drug paraphernalia was recovered in the apartment[, and n]o drug buys or transactions were ever observed . . . at the apartment.” Castro’s argument is unpersuasive. “The proximity of a weapon to drug proceeds provides a sufficient nexus to conclude ‘that it was not clearly improbable that the gun was connected with the offense.’”²⁰ “Given that the gun and the drug proceeds were located in the same [closet], the district

¹⁷ *United States v. Cooper*, 274 F.3d 230, 245 (5th Cir. 2001) (quoting *United States v. Eastland*, 989 F.2d 760, 770 (5th Cir. 1993)).

¹⁸ *United States v. Ruiz*, 621 F.3d 390, 396 (5th Cir. 2010) (citing *Cooper*, 274 F.3d at 246 n.8).

¹⁹ *Id.* (quoting *Cisneros-Gutierrez*, 517 F.3d at 764-65).

²⁰ *United States v. Noble*, 246 F.3d 946, 954 (7th Cir. 2001) (quoting *United States v. Johnson*, 227 F.3d 807, 814 (7th Cir. 2000)).

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court was correct to impose the enhancement.”²¹ Accordingly, the district court did not clearly err in applying the § 2D1.1(b)(1) enhancement.

B

We next consider the premises enhancement. Under U.S.S.G. § 2D1.1(b)(12), a sentencing court shall “apply a two-level sentence enhancement ‘[i]f the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance.’”²² “Although manufacturing or distributing need not be the sole purpose for which the premises is maintained, it must ‘be one of the defendant’s primary or principal uses for the premises, rather than one of the defendant’s incidental or collateral uses for the premises.’”²³

Castro does not argue that he did not “maintain” the premises. Rather, Castro argues he did not do so “for the purpose of manufacturing or distributing” given that “no drugs were recovered at the apartment[,] nor does any indication exist that drugs were ever stored on the premise[s]. No drug transactions were assumed to have taken the apartment [And n]o drug paraphernalia . . . was recovered at the apartment.” The district court “agree[d]” that “storing proceeds is part and parcel to [] distribution.” It was not clear error for the district court to find the act of storing drug proceeds falls within an expansive view of “distributing,” since Castro would have necessarily taken the proceeds back from drug sales to the apartment in

²¹ *Id.*; see also *United States v. Juluke*, 426 F.3d 323, 328 (5th Cir. 2005) (upholding § 2D1.1(b)(1) enhancement where “[t]he loaded weapons at issue were found in the same home as the cash, and one was found in the same closet as a portion of the cash”).

²² *United States v. Eustice*, 952 F.3d 686, 691-92 (5th Cir. 2020) (quoting § 2D1.1(b)(12)).

²³ *Id.* at 692 (quoting § 2D1.1(b)(12) cmt. n.17).

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order to store them there.²⁴ Given Castro’s admissions that the money and jewelry “were the proceeds” of his drug trafficking, and the apartment was used “in furtherance of his drug trafficking activities,” the district court did not clearly err in applying the enhancement.

Castro further argues that “[t]he storage of drug proceeds at the apartment [was] nothing more than an incidental or collateral use for the premises” and therefore not a “primary or principal use[.]” At sentencing, Castro asserted that “this premises was used for no more than habitational-type purposes.” However, the apartment was not Castro’s residence. He resided at a house in northwest Houston. The apartment was rented in a woman’s name. There were only a few items of Castro’s clothing in the apartment and no women’s clothing. It was sparsely furnished, and Castro said he only “stayed there on occasion.”

This court’s “evidentiary bar for establishing a primary use ‘has not been set high,’”²⁵ and we have repeatedly held that the “residential quality of the premises cannot shield [a defendant] from this enhancement.”²⁶ For instance, we have upheld the premises enhancement where the defendant “lived in the premises and raised his family there for thirty-five years” because the defendant “stored drugs in his garage” for a “couple of hours”

²⁴ See, e.g., *United States v. Carrillo*, 689 F. App’x 334, 335-36 (5th Cir. 2017) (noting the district court could consider “the over \$12,000 in drug proceeds also stored” in a garage to apply the § 2D1.1(b)(12) enhancement); *United States v. Rodriguez*, No. 20-10862, 2021 WL 6101371, at *1 (5th Cir. Dec. 21, 2021) (noting “over \$23,000 in cash concealed in a cereal box and behind a dresser drawer” supported the finding that distribution was a primary purpose of the premises).

²⁵ *United States v. Galicia*, 983 F.3d 842, 844 (5th Cir. 2020) (quoting *United States v. Fonseca*, 834 F. App’x 75, 79 (5th Cir. 2020)).

²⁶ *Id.*

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on “three occasions over a two-and-a-half-year period.”²⁷ Here, the residential nature of the apartment is even less, as Castro only “stayed at the apartment from time to time.” The large amount of cash—more than one million dollars—and jewelry worth approximately a quarter of a million dollars, indicate that a principal use of the apartment was the storage of what were admittedly proceeds from drug trafficking. “Given the low bar for establishing a primary use for a premises,”²⁸ the district court did not clearly err in finding storing proceeds was a primary use of the premises.

Finally, Castro argues his admission is “merely a conclusory statement purporting to be a legal conclusion rather than evidence to support the enhancement.” Castro contends that “[i]t is reversible error to rely on ‘a single, conclusory statement in the factual basis’ to support an enhancement, without additional evidence.” Castro bases this assertion on *United States v. Le*.²⁹ In *Le*, the district court applied the § 2D1.1(b)(12) enhancement based on the defendant’s admission that “he and [a co-conspirator] did unlawfully and knowingly *use and maintain* [the] motorcycle shop . . . for the purpose of distributing and using methamphetamine.”³⁰ In finding that the district court erred by relying on this statement, we stressed the ambiguity of the admission: “[W]hen Le admitted the factual basis, he may have ‘admitted’ one of a number of possible ‘and/or’ permutations—including that [the co-conspirator] *maintained*, while Le only *used*, the shop as a drug premises.”³¹ No such ambiguity is present here. Further, we

²⁷ *Id.* at 844-45.

²⁸ *Id.* at 845.

²⁹ 126 F.4th 373 (5th Cir. 2025).

³⁰ *Id.* at 377 (second alteration and omission in original).

³¹ *Id.*

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observed in *Le* “that no Fifth Circuit case holds that a district court clearly errs in applying a sentencing enhancement based solely on a defendant’s admissions.”³²

JUDGE DENNIS’s dissenting opinion in the present case advances an argument similar to the *expressio unius* canon of construction, maintaining that the phrase “including storage of a controlled substance” necessarily implies the exclusion of “storage of proceeds” from the meaning of “distribution.”³³ But “[t]he force of any negative implication” under *expressio unius* “depends on context.”³⁴ “These two inquiries are therefore helpful: ‘(1) Whether the statutory text communicates exclusivity, and (2) whether the included term goes hand in hand with the missing term, allowing the inference that the omission has interpretive force.’”³⁵ Here, the text of the comment in the Guidelines does not indicate exclusivity because “including” is illustrative rather than exhaustive.³⁶

The premises enhancement is designed to impose consequences on those who “maintain[] a premises for the purpose of . . . distributing a controlled substance.”³⁷ Castro was the supplier in a conspiracy to distribute cocaine. The purpose of a conspiracy to distribute illegal drugs is to obtain

³² *Id.* at 380.

³³ *See post* at 12-13.

³⁴ *NLRB v. Sw. Gen., Inc.*, 580 U.S. 288, 302 (2017) (quoting *Marx v. Gen. Revenue Corp.*, 658 U.S. 371, 381 (2013)).

³⁵ *United States v. Vargas*, 74 F.4th 673, 686 (5th Cir. 2023) (quoting *United States v. Cartagena-Lopez*, 979 F.3d 356, 362 (5th Cir.), *reh’g granted*, No.20-40122, 2020 WL 13837259 (2020)).

³⁶ *Cf. Doe v. SEC*, 28 F.4th 1306, 1314 (D.C. Cir. 2022) (“Notably missing from the regulations are words or phrases indicating that the three listed fact patterns are merely illustrative—for example, . . . ‘including.’”).

³⁷ U.S.S.G. § 2D1.1(b)(12).

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proceeds. Storing drug proceeds is an integral part of “distributing a controlled substance.”³⁸

Accordingly, the district court did not err in applying the premises enhancement.

* * *

For the foregoing reasons, the district court did not clearly err in applying either the U.S.S.G. § 2D1.1(b)(1) firearm enhancement or the U.S.S.G. § 2D1.1(b)(12) premises enhancement. Because we find no clear error, we do not reach the question of whether the “objection raises no more than harmless error.”³⁹ We AFFIRM Castro’s sentence.

³⁸ *Id.*

³⁹ *United States v. Giglio*, 126 F.4th 1039, 1047 (5th Cir. 2025).

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JAMES L. DENNIS, *Circuit Judge*, concurring in part and dissenting in part:

I agree with the majority that the district court correctly applied the U.S.S.G. § 2D1.1(b)(1) firearm enhancement in sentencing Rodney Ignacio Castro. But I respectfully disagree that the same is true with respect to the premises enhancement under § 2D1.1(b)(12). That enhancement applies only where a “defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance.” Consequently, we have *never* upheld the enhancement absent evidence that the defendant actually maintained the identified premises to manufacture, distribute, or store a controlled substance. The majority breaks from that practice by treating Castro’s bare admission that he used his downtown Houston apartment “in furtherance of his drug trafficking activities,” combined with the presence of drug proceeds and a firearm there, as sufficient. Because such evidence is insufficient under the plain language of § 2D1.1(b)(12) and our precedent, I respectfully concur in part and dissent in part.

* * *

Section 2D1.1(b)(12) provides for a two-level sentencing enhancement “[i]f the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance.” The commentary explains that the enhancement “applies to a defendant who knowingly maintains a premises . . . for the purpose of manufacturing or distributing a controlled substance, including storage of a controlled substance for the purpose of distribution.” § 2D1.1(b)(12) cmt. n.17. Although this “need not be the sole purpose for which the premises was maintained,” it must be “one of the defendant’s primary or principal uses for the premises,” not merely “incidental or collateral.” *Id.*

The district court acknowledged that investigators found neither drugs nor drug paraphernalia in Castro’s downtown Houston apartment.

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Nevertheless, it applied § 2D1.1(b)(12) based on the presence of drug proceeds and a firearm, and on Castro's admission in the factual basis that he used the apartment "in furtherance of his drug trafficking activities":

Mr. Castro admitted that he -- the apartment [in downtown Houston] was used in furtherance of his drug trafficking activities, which *could be drugs*, proceeds, guns. *He had his proceeds and guns there. We don't know what he had at other times. I don't know.* That's -- when the search warrant was executed, that's what was found, but he admitted it in the factual basis.

The court further "agree[d]" with the Government that "storing proceeds is part and parcel to the distribution." The majority affirms on the view that storing drug proceeds fits within an "expansive" notion of "distributing" because "Castro would have necessarily taken the proceeds back from drug sales to the apartment in order to store them there." *Ante*, at 7–8. Thus, according to the majority, "the district court did not clearly err in finding that *storing proceeds* was a primary use of the premises." *Id.* at 10 (emphasis added).

That holding cannot be squared with the plain text of § 2D1.1(b)(12). The guideline and its commentary expressly require manufacture, distribution, or storage of "*a controlled substance*," not proceeds. § 2D1.1(b)(12) & cmt. n.17 (emphasis added). Proceeds are not a controlled substance, and treating the storage of proceeds as dispositive of controlled substance "distribution" rewrites the enhancement and elides the distinction drawn by our own precedent.¹ We have long required direct

¹ The majority's rebuttal—that § 2D1.1(b)(12) is not confined to controlled substances—cannot be reconciled with the Guideline and commentary's plain text. *Ante* at 10–11. The Guideline applies only where "the defendant maintained a premises for the purpose of manufacturing or distributing *a controlled substance*["]." § 2D1.1(b)(12) (emphasis added). The commentary reinforces that limitation: "Subsection (b)(12) applies

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evidence—drugs, paraphernalia, or transactions at the site—from which a court may infer that the premises was maintained for drug manufacturing, distribution, or storage. *See United States v. Benitez*, 809 F.3d 243, 250 (5th Cir. 2015) (defendant “received drug deliveries” and investigators recovered an air-breathing mask, a cutting agent, and a metal strainer “in addition to the drugs themselves” at the premises); *United States v. Rodney*, 532 F. App’x 465, 473 (5th Cir. 2013) (defendant accessed a shed “[i]mmediately” before two crack cocaine sales, supporting the inference the shed was maintained at least temporarily to store and package drugs). Where we have relied on cash or firearms, the record likewise contained evidence of drugs or drug paraphernalia at the premises. *See United States v. Carrillo*, 689 F. App’x 334, 335–36 (5th Cir. 2017) (mem.) (a “large quantity of methamphetamine” and “methamphetamine residue” were found at defendant’s premises, along with over \$12,000 in proceeds); *United States v. Fonseca*, 834 F. App’x 75, 79 (5th Cir. 2020) (defendant stopped en route to his residence with 9.94 kilograms of cocaine and \$318,659 intended to be stored there); *United States v. Pardo-Oseguera*, 844 F. App’x 739, 740 (5th Cir. 2021) (defendant’s

to a defendant who knowingly maintains a premises . . . for the purpose of manufacturing or distributing *a controlled substance*, including storage of *a controlled substance* for the purpose of distribution.” *Id.* cmt. n.17 (emphasis added).

The throughline? A controlled substance. By expanding the Guideline’s plain language to encompass the mere storage of proceeds by means of a tortured syllogism, the majority effectively reads the controlled substance limitation out of the Guideline and its commentary. And unsurprisingly, our precedent upholding the enhancement has always emphasized evidence tying the premises to contraband or drug transactions. *See, e.g., United States v. Ajayi*, 64 F.4th 243, 250 (5th Cir. 2023) (distribution of illegally prescribed controlled substances); *United States v. Guzman-Reyes*, 853 F.3d 260, 264–65 (5th Cir. 2017) (storage of methamphetamine); *United States v. Rico*, 864 F.3d 381, 384 (5th Cir. 2017) (same); *United States v. Romans*, 823 F.3d 299, 321 (5th Cir. 2016) (storage and distribution of marijuana).

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residence contained “more than 400 grams of methamphetamine” along with “drug paraphernalia and a firearm”).

The record here contains no such evidence and, until today, we have been “skeptical” of inferring prior drug storage from the mere presence of cash and firearms at a residence even where drugs intended for distribution were also present. *United States v. Rodriguez*, 707 F. App’x 224, 227 (5th Cir. 2017). We have extended that same skepticism to cases involving far more egregious facts than those offered to support Castro’s sentencing. *Cf. United States v. Lopez*, 750 F. App’x 349, 352–53 (5th Cir. 2018) (acknowledging application of the enhancement was “a close factual question” where premises contained over 400 kilograms of marijuana, multiple Xanax pills, drug paraphernalia, firearms, and ammunition, as well as the district court’s credibility finding that drugs were sold from the residence).

Nor does Castro’s generalized admission that he used his apartment “in furtherance of his drug trafficking activities” carry the day, which is confirmed by our recent holding in *United States v. Le*, 126 F.4th 373 (5th Cir. 2025). There, the premises enhancement rested on a defendant’s admission that he “unlawfully and knowingly use[d] and maintain[ed]” a motorcycle shop as a drug premises. *Id.* at 377, 379. Faced with a “sparse factual record,” we held that this bare factual-basis statement could not plausibly support that the defendant “maintained” a drug premises where “it [was] not even clear what [the defendant] admitted.” *Id.* at 380. The Government and the district court had read “use” and “maintain” as interchangeable; the indictment and factual basis spoke in “use and maintain” terms, but the supporting narrative—and the surrounding evidentiary record—pointed only to use, not maintenance. *Id.* We warned that leaning on that equivocal phrasing would “overlook[] much of the factual narrative” and an evidentiary record that “militates to the contrary.” *Id.* And “given the dearth of other evidence” that the defendant actually maintained the shop, we reversed because the

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enhancement rested “solely on a single, conclusory statement” in the factual basis. *Id.* at 381.

That reasoning applies here. Castro’s statement that he used his apartment “in furtherance of his drug trafficking activities” is even more equivocal than the defendant’s admission in *Le* that he “used and maintained” the premises. “In furtherance of” could refer to many incidental or collateral uses such safeguarding drug proceeds, which the evidence supports was Castro’s use of the Houston apartment. He did not admit he “maintained” his apartment for manufacture, distribution, or storage “of a controlled substance,” *see* § 2D1.1(b)(12), and reading “in furtherance of” to do that work “requires overlooking much of the factual narrative itself.” *Le*, 126 F.4th at 380.

If anything, the record favors the conclusion that Castro’s downtown Houston apartment was incidental to, not the locus of, his drug trafficking activities. The factual basis describes two drug transactions involving seventeen kilograms of cocaine where investigators watched Castro leave his “residence” on “Briarcliff” Drive to meet prospective buyers. It also recounts several of his multi-kilogram deliveries to a designated “stash house” on “Great Oaks” Drive. Nothing ties those transactions or deliveries to the downtown apartment on “Texas Avenue.” What links exist instead reasonably suggest that Castro’s distribution operations were centered elsewhere, while the Houston apartment contained only proceeds and a firearm. Given the sparsity of the record, the ambiguity of Castro’s statement, and alternative inference more directly supported by the evidence, *Le* instructs that the district court’s reliance on his single conclusory admission cannot carry the application of § 2D1.1(b)(12) alone. *See id.* at 380–81.

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At bottom, the Government's proffer is insufficient to show that Castro maintained the apartment to manufacture, distribute, or store a controlled substance, and the record is devoid of drugs, residue, paraphernalia, or transactions at that location. Because I would find that § 2D1.1(b)(12) does not apply and would vacate Castro's sentence and remand for resentencing on this limited basis, I respectfully concur in part and dissent in part.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 25, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 24-40621 USA v. Castro
USDC No. 1:22-CR-115-5

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Amanda M. Duroncellet

By:

Amanda M. Duroncellet, Deputy Clerk

Enclosure(s)

Mr. Michael Andrew Anderson

Ms. Traci Lynne Kenner

Mr. Bradley Elliot Visosky

Mr. James Patrick Whalen

APPENDIX C

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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CLERK

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Suite 115
NEW ORLEANS, LA 70130

December 26, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

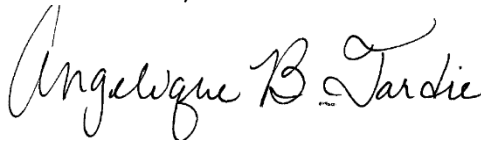
No. 24-40621 USA v. Castro
USDC No. 1:22-CR-115-5

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Angelique B. Tardie, Deputy Clerk
504-310-7715

Mr. Michael Andrew Anderson
Ms. Traci Lynne Kenner
Mr. Bradley Elliot Visosky
Mr. James Patrick Whalen

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 29, 2025

Lyle W. Cayce
Clerk

No. 24-40621

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RODNEY IGNACIO CASTRO,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:22-CR-115-5

ON PETITION FOR REHEARING EN BANC

Before SMITH, DENNIS, and RICHMAN, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

APPENDIX D



Search documents in this case:

Search

No. 25A1044

Title: **Rodney Ignacio Castro, Applicant**
v.
United States

Docketed: March 23, 2026

Lower Ct: United States Court of Appeals for the Fifth Circuit

Case Numbers: (24-40621)

Proceedings and Orders

Mar 03 2026 Application (25A1044) to extend the time to file a petition for a writ of certiorari from March 29, 2026 to May 13, 2026, submitted to Justice Alito.

Main Document Lower Court Orders/Opinions
Lower Court Orders/Opinions

Mar 23 2026 Application (25A1044) granted by Justice Alito extending the time to file until April 28, 2026.

Attorneys

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