

NO.

IN THE SUPREME COURT OF THE UNITED STATES

PEDRO JOSE SILVA OCHOA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

AMENDED PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The questions presented in this petition are:

1. Whether a defendant's challenge to a sentence exceeding the guideline range advocated by the defense at sentencing survived an appeal waiver that expressly recognized the defendant's right to argue against guideline enhancements at sentencing and the waiver did not explicitly state that any resulting enhancements could not be appealed.
2. Whether an appeal waiver applies when the sentencing judge advises the defendant of the right to appeal without a government objection.

The questions presented in this petition are pending before the Court in *Hunter v. United States*, No. 24-1063, 146 S. Ct. 288, 2025 WL 2885281 (2025), addressing the limits of appeal waivers agreed to as part of a guilty plea.

PARTIES TO THE PROCEEDING

All parties are listed in the caption, to wit:

- Pedro Jose Silva Ochoa
- United States of America

No corporate parties or stock ticker symbols are involved.

STATEMENT OF RELATED CASES

This case arises from the following proceedings:

United States v. Silva Ochoa, No. 25-10901, 2026 WL 493804 (11th Cir. Feb. 23, 2026) (dismissing appeal based on appeal waiver) (App. 1);

United States v. Silva Ochoa, No. 23-Cr-20173-KMM (S.D. Fla. May 22, 2025) (entering judgment of conviction and sentence) (App. 47).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of Supreme Court Rule 14.1(b)(iii).

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

Petitioner Pedro Jose Silva Ochoa, an inmate incarcerated at Otisville Federal Correctional Institution, petitions for issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The United States Court of Appeals opinion is unreported but available at 2026 WL 493804 (11th Cir. Feb. 23, 2026), and is reprinted in the Appendix at App. 1.

JURISDICTION

Petitioner seeks review of the decision of the United States Court of Appeals for the Eleventh Circuit entered on February 23, 2026 (App. 1). Mandate issued on March 25, 2026 (App. 95). This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution states in relevant part: "No person shall be held to answer for a capital, or otherwise infamous crime, except on presentment or indictment of a

Grand Jury ... nor shall any person ... be deprived of life, liberty, or property without due process of law ...”

INTRODUCTION

As addressed in the pending case of *Hunter v. United States*, No. 24-1063, this case similarly presents the Court with an opportunity to resolve a circuit split relating to appeal waivers in plea agreements affecting many criminal defendants who enter plea agreements with the government. This recurring issue of substantial importance merits this Court's use of its certiorari jurisdiction.

Courts of appeals are divided over the circumstances under which a defendant may appeal a sentence notwithstanding a general appeal waiver. This Court recognized that “no appeal waiver serves as an absolute bar to all appellate claims.” *Garza v. Idaho*, 586 U.S. 232, 238 (2019). But this Court has “ma[de] no statement ... on what particular exceptions [to appeal waivers] may be required.” *Id.* at 238-39 & n.6. Without this Court’s guidance on those exceptions, the circuits have badly fractured over which exceptions are appropriately recognized.

Further, courts of appeals also disagree about whether a judge's assurance that the defendant has a right to appeal can overcome an

otherwise valid appeal waiver. The Ninth Circuit has consistently held that the defendant may appeal where, as in this case, the district court provides such assurances, and the government does not object. Other circuits have expressly acknowledged but rejected the Ninth Circuit's approach. Only this Court's intervention can resolve this split of authority.

An appeal waiver that does not specifically limit appellate relief when a plea agreement expressly allows a defendant to challenge guideline enhancements represents a notorious ambiguity in the scope of an appeal waiver, underscoring the legitimate confusion on the defendant's part that emphasizing that upends any likelihood the defendant understood the full significance of the waiver. That confusion undermines the legitimacy of the sentencing and appeal process in a justice system that "is for the most part a system of pleas, not a system of trials." *Missouri v. Frye*, 566 U.S. 134, 143-44 (2012) (quoting *Lafler v. Cooper*, 566 U.S. 156, 170 (2012)). Broad, one-size-fits-all appellate waivers are the norm. As a result of the circuit uncertainty in the enforcement of appellate waivers, some defendants who are legitimately misled as to the scope of their waivers are permitted to appeal, while

others are not. Such inconsistency, especially in the context of a sentencing judge's assurance of the right to appeal a sentence, undermines the integrity of the justice system and breeds mistrust and uneven justice. Only this Court can provide the needed clarity.

STATEMENT OF THE CASE

Petitioner Silva Ochoa appealed his conviction and sentence for conspiracy to kidnap an internationally protected person, in violation of 18 U.S.C. § 1201(c), and sentence of imprisonment for 327 months.

A. Plea Agreement and Appeal Waiver.

Silva Ochoa's plea agreement (App. 5) contained an "Appellate Waiver" that stated:

15. The defendant is aware that [28 U.S.C. § 1291] and [18 U.S.C. § 3742] afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Sections 1291 and 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the [district c]ourt establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in [18 U.S.C. §] 3742(b) and [28 U.S.C. §] 1291. However, if the United States appeals

the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of his right to appeal his sentence.

16. The defendant further hereby waives all rights conferred by [28 U.S.C. §] 1291 to assert any claim that (1) the statute(s) to which the defendant is pleading guilty is/are unconstitutional; and/or (2) the admitted conduct does not fall within the scope of the statute(s) of conviction.

17. By signing this agreement, the defendant acknowledges that [he] has discussed the appeal waiver set forth in this agreement with the defendant's attorney. The defendant further agrees, together with this Office, to request that the [district c]ourt enter a specific finding that the defendant's waiver of his right to appeal the sentence imposed in this case and his right to appeal his conviction in the manner described above was knowing and voluntary.

The plea agreement also informed Silva Ochoa that he was reserving his right to “argue that” enhancements under U.S.S.G. §§ 2A4.1(5) and 3B1.1 should not apply but would agree that U.S.S.G. § 2A4.1(2)(B) applied (App. 7-8). He agreed these recommendations were not binding on the district court. Neither the plea agreement nor the magistrate judge who accepted Silve Ochoa’s plea expressly explained that an adverse ruling on the enhancements to which he was permitted to argue would not be preserved for appeal.

B. Sentencing and Notification of Right to Appeal.

At sentencing (App. 54), Silva Ochoa objected to the enhancements

he reserved in the plea agreement (App. 56, 62-64, 73-74, 78-85), but the sentencing court nevertheless applied the enhancements. As the sentencing hearing concluded, the court specifically informed Silva Ochoa of the right to appeal the sentence, to which the government did not object (App. 93-94):

THE COURT: Okay. Mr. Ochoa, do you understand you have a right to appeal the sentence that I've imposed?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Anything further?

[DEFENSE COUNSEL]: Nothing further, Your Honor.

C. Appellate Review.

On appeal, Silva Ochoa argued his sentence was procedurally unreasonable, because the sentencing court erroneously applied U.S.S.G. § 2A4.1(b)(5), and was substantively unreasonable under the relevant sentencing factors, codified at 18 U.S.C. § 3553(a). The government moved to dismiss Ochoa's appeal, arguing that Ochoa knowingly and voluntarily waived his right to appeal as part of the plea agreement. The Eleventh Circuit, agreeing with the government, dismissed the appeal. *United States v. Silva Ochoa*, 2026 WL 493804, *1 (11th Cir. Feb. 23, 2026). The court concluded that the appellate waiver barred Silva Ochoa

from challenging the application of the sentencing enhancements and the substantive reasonableness of his sentence. *Id.* at *4.

REASONS FOR GRANTING THE PETITION

This petition presents an ideal vehicle for resolving circuit splits arising from appeal waivers and defendants’ subsequent challenges to the validity of their sentences. The circuits are divided over when defendants may challenge their sentences on appeal notwithstanding general appeal waivers. As explained by the Eleventh Circuit, “we apply the waiver according to its terms.” *United States v. Silva Ochoa*, 2026 WL 493804, at *3. The court then explained the narrow circumstances under which the court “might not apply an otherwise valid appeal waiver.” *Id.*, at *3 n.1. Among those circumstances are those challenging a jurisdictional defect, constitutionally impermissible sentencing considerations, and “extreme circumstances – like a public flogging sentence ...” *Id.* Three circuits join the Eleventh in recognizing only narrow, enumerated categories of exceptions to general waivers. But four other circuits disagree and reject the narrow approach, permitting defendants to raise a broad range of constitutional challenges to their sentences-including due process challenges. Only this Court can resolve

the split and say whether the Eleventh Circuit's restrictive approach is correct.

The circuits are further divided over whether an appeal waiver bars an appeal when the sentencing judge informs the defendant of the right to appeal without objection from the government. The Ninth Circuit has long held that the judge's un-objected to statement permits an appeal. Other circuits, including the Eleventh Circuit, expressly reject the Ninth Circuit's approach.

The questions presented are important to the overall operation of the criminal justice system. First, as directed by the Eleventh Circuit in solidarity with four other circuits, defendants who sign broad, boilerplate appeal waivers as part of a plea agreement deal are powerless to challenge even substantively unreasonable sentences and those imposing enhancement for which the defendant expressly reserved the right to mount an objection. Second, trust in the criminal system will be undermined if Silva Ochoa cannot rely on the sentencing judge's clear advice that he can appeal his sentence.

Whether a defendant can exercise the right to appeal should not depend on where a defendant is sentenced. Only this Court can resolve these recurring splits and establish uniformity nationwide.

I. The Circuits Are Divided Regarding Allowable Exceptions to General Appeal Waivers.

The Eleventh Circuit, joined by three other circuits, apply narrow exceptions to appeal waivers. Notwithstanding, four circuits embrace a broader approach permitting defendants to raise challenges to their sentences when doing so is necessary to avoid injustice or protect fundamental rights. Absent this Court’s intervention, this split will continue producing unequal results based solely on geography.

A. The Narrow Approach to Permissible Appeals.

The Fifth, Sixth, Tenth, and Eleventh Circuits hold that general appeal waivers allow only a very narrow category of cases. Under this stringent standard, none of these circuits would permit Silva Ochoa’s appeal.

The Fifth Circuit applies the most stringent standard. It “ha[s] recognized only two exceptions” to a general appeal waiver: “ineffective assistance of counsel” and “a sentence exceeding the statutory

maximum.” *United States v. Barnes*, 953 F.3d 383, 388-89 (5th Cir. 2020). The Fifth Circuit has consistently “decline [d]” to adopt a broader standard for appeal waivers that would permit defendants to raise other constitutional infirmities in their sentences. *See United States v. Chaney*, 120 F.4th 1300, 1303 (5th Cir. 2024). Thus, in the Fifth Circuit, constitutional challenges to sentences are frequently left unheard and unremedied.

The Sixth and Eleventh Circuits take a similarly limited approach, adding just one more exception to the list: claims alleging that the sentence was imposed based on a constitutionally impermissible factor (such as the defendant’s race). *See, e.g., Portis v. United States*, 33 F.4th 331, 335, 339 (6th Cir. 2022) (citing *United States v. Ferguson*, 669 F.3d 756, 764 (6th Cir. 2012)) (listing three “possibilities”); *King v. United States*, 41 F.4th 1363, 1367 (11th Cir. 2022) (citing *United States v. Bushert*, 997 F.2d 1343, 1350 n.18 (11th Cir. 1993); *United States v. Howle*, 166 F.3d 1166, 1169 n.5 (11th Cir. 1999)) (listing three “narrow substantive exceptions”), *cert. denied*, 143 S. Ct. 1771 (2023); *United States v. Windham*, 2025 WL 18584, at *7 (11th Cir. Jan. 2, 2025) (per curiam) (applying exceptions). These circuits acknowledge that their

approach differs from the broader standards applied by “[s]ome of [their] sister circuits.” *Rudolph v. United States*, 92 F.4th 1038, 1048 (11th Cir. 2024), *cert. denied*, 2025 WL 76523 (U.S. Jan. 13, 2025); *see also United States v. Johnson*, 2024 WL 5480549, at *2 (6th Cir. Dec. 18, 2024).

The Tenth Circuit recognizes one additional, but similarly limited, exception: “the waiver itself is unlawful because of some procedural error or because no waiver is possible.” *United States v. Holzer*, 32 F.4th 875, 887 (10th Cir. 2022) (quoting *United States v. Sandoval*, 477 F.3d 1204, 1208 (10th Cir. 2007)).

B. The Broad Approach to Allowable Appeals.

The First, Second, Fourth, and Ninth Circuits chart a different course, allowing defendants to bring a wide range of challenges to their sentences, notwithstanding a general appeal waiver.

In the Ninth Circuit, appeal waivers allow defendants to “challenge that the sentence violates the Constitution,” so long as they “did not expressly waive [appeal as to the] specific constitutional right.” *United States v. Wells*, 29 F.4th 580, 587-88 (9th Cir. 2022); *see also United States v. Atherton*, 106 F.4th 888, 893-96 (9th Cir. 2024); *United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007). As the Ninth Circuit explained,

it would be a “miscarriage of justice” to enforce the waiver in the face of an unconstitutional sentence. *Wells*, 29 F.4th at 583-84 (citation omitted). The Ninth Circuit’s exception to general appeal waivers is not limited to due process claims. That court has frequently “allowed other types of constitutional arguments,” as well. *Atherton*, 106 F.4th 894-95 (collecting cases).

The First Circuit utilizes an equally expansive approach, considering the “clarity” “gravity,” and “character” of the error, “the impact of the error on the defendant,” “the impact of correcting the error on the government,” and “the extent to which the defendant acquiesced in the result.” *United States v. Boudreau*, 58 F.4th 26, 33 (1st Cir. 2023), *cert. denied*, 144 S. Ct. 229 (2023). Under that standard, the First Circuit considers the merits of constitutional challenges concerning a violation of the defendant’s “fundamental constitutional liberty interest.” *See, e.g., United States v. Del Valle-Cruz*, 785 F.3d 48, 56-57 (1st Cir. 2015) (restriction on family contact). The First Circuit reasoned that “where, as here, the error is of [a] constitutional dimension, there can be no doubt that [the] enforcement of the waiver would be a miscarriage of justice.” *Id.* at 57.

The Second Circuit allows defendants to raise challenges beyond those permitted by the courts on the Eleventh Circuit’s side of the split, particularly where the issue on appeal concerns “a fundamental right.” *United States v. Riggi*, 649 F.3d 143, 147 (2d Cir. 2011). In this regard, appeal waivers are construed narrowly so as “to properly safeguard defendants’ rights.” *United States v. Burden*, 860 F.3d 45, 53-55 (2d Cir. 2017) (per curiam); *see also United States v. Arevalo*, 628 F.3d 93, 99 (2d Cir. 2010) (due process violation may “void an appeal waiver”).

The Fourth Circuit holds that a general appeal waiver is unenforceable when the “sentencing court violated a fundamental constitutional or statutory right.” *United States v. Carter*, 87 F.4th 217, 225-26 (4th Cir. 2023) (quoting *United States v. Archie*, 771 F.3d 217, 223 (4th Cir. 2014)). This exception permits review of claims that a defendant’s due process rights were violated at sentencing. *See, e.g., United States v. Singletary*, 75 F.4th 416, 421-23 (4th Cir.), *cert. denied*, 144 S. Ct. 519 (2023). The Eleventh Circuit’s position would prohibit such a claim.

Under the tests utilized in the competing circuits, Silva Ochoa would have been permitted to raise his substantive and procedural

unreasonableness challenge to the sentence based on a narrow construction of the ambiguous plea agreement and a broad approach to the waiver provision. But because he was sentenced in the Eleventh Circuit, Silva Ochoa was unable to pursue his claim.

II. The Circuits Are Divided Regarding the Effect of Judges' Statements on Appeal Waivers.

The courts of appeals are also divided on the effect of sentencing judges' statements at sentencing that the defendant has a "right to appeal."

In the Ninth Circuit, a sentencing judge's statement that the defendant "could appeal" the sentence, combined with the lack of a government objection, make an appeal waiver "unenforceable." *United States v. Felix*, 561 F.3d 1036, 1041 (9th Cir. 2009).

Silva Ochoa's appeal would not have been dismissed had sentencing taken place in the Ninth Circuit. The sentencing judge unambiguously informed Silva Ochoa, "Mr. Ochoa, do you understand you have a right to appeal the sentence that I've imposed?" (App. 93). The government did not object. *Id.* To the contrary, when asked whether the parties had "anything further?", government counsel merely stated "Thank you, Your

Honor” as the hearing concluded. *Id.*

By contrast, the First, Second, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits have “expressly decline[d] to adopt the Ninth Circuit’s rule.” *United States v. Fleming*, 239 F.3d 761, 765 (6th Cir. 2001); see *United States v. Teeter*, 257 F.3d 14, 25 (1st Cir. 2001); *United States v. Fisher*, 232 F.3d 301, 304 (2d Cir. 2000); *United States v. Gonzalez*, 259 F.3d 355, 358 (5th Cir. 2001); *United States v. Ogden*, 102 F.3d 887, 888-89 (7th Cir. 1996); *United States v. Michelsen*, 141 F.3d 867, 872 (8th Cir. 1998); *United States v. Atterberry*, 144 F.3d 1299, 1301 (10th Cir. 1998); *United States v. Bascomb*, 451 F.3d 1292, 1297 (11th Cir. 2006). These circuits hold that an appeal waiver “cannot be vitiated or altered by comments the court makes during sentencing.” *Bascomb*, 451 F.3d at 1297.

III. These Questions Are Important, Recurring, and Squarely Presented.

A defendant's ability to challenge a sentence notwithstanding a general appeal waiver is a question of exceptional importance. “[W]holesale waiver[s] of the right to appeal,” *United States v. Atherton*, 106 F.4th 888, 896 (9th Cir. 2024), are common in federal criminal cases.

Guilty pleas account for a substantial majority of federal convictions. *See* U.S. Sent. Comm'n, Sourcebook of Federal Sentencing Statistics (2024), <https://tinyurl.com/ydnhmmvm>. Boad appeal waivers tend to be the rule rather than the exception to case resolutions.

The extent to which courts can impose constitutionally sufficient safeguards accompanying appeal waivers is vital to the fair operation of the criminal justice system. deeply important. Plea agreements are within the discretion of prosecutors and negotiated without court supervision. A justice system typified by behind-the-scenes “horse trading,” this Court observed, is what “determines who goes to jail and for how long ...” “[i]t is not some adjunct to the criminal justice system; it is the criminal justice system.” *Missouri v. Frye*, 566 U.S. at 143-44 (citation and quotation omitted).

Allowing a defendant to rely on a judge’s statement authorizing an appeal despite a general appeal waiver is an equally pressing question. When sentencing judges inform defendants of the right to appeal, litigants should be entitled to rely on a judge’s authorization.

Rule 32 requires a sentencing court to “advise the defendant of any right to appeal the sentence” “regardless of the defendant’s plea.” Fed. R.

Crim. P. 32(j)(1)(B). That rule compels courts to remind a defendant of the appeal rights “retained” after “waiv[ing] most of [them].” *United States v. Schuman*, 127 F.3d 815, 818 (9th Cir. 1997) (per curiam) (Kozinski, J., concurring) (emphasis added). A judge’s admonition is undeniably an important aspect of the public’s “trust [in] the oral pronouncements of district court judges.” *United States v. Buchanan*, 59 F.3d 914, 918 (9th Cir. 1995).

Resolution of these important jurisprudential disputes is appropriate here. The Eleventh Circuit dismissed Silva Ochoa’s appeal despite an ambiguous appeal waiver and the sentencing court’s authorization to appeal. The division among the circuits is squarely present here, warranting this Court’s review.

CONCLUSION

For all these reasons, this Court should grant the petition.

Dated: May 26, 2026.

Respectfully submitted,

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APPENDIX

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2026 WL 493804

Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-
Appellee,

v.

Pedro Jose SILVA OCHOA, a.k.a. Tata,
Defendant-Appellant.

No. 25-10901

Non-Argument Calendar

Filed: 02/23/2026

Appeal from the United States District Court for the Southern
District of Florida D.C. Docket No. 1:23-cr-20173-KMM-3

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- Appellee.

[Benedict P. Kuehne](#), Kuehne Davis Law, PA, Miami, FL for
Defendant - Appellant.

Before [Newsom](#), [Brasher](#), and [Abudu](#), Circuit Judges.

Opinion

PER CURIAM:

*1 **Pedro Jose Silva Ochoa** appeals his 327-month sentence for conspiracy to kidnap an internationally protected person, 18 U.S.C. § 1201(c). On appeal, he argues that the district court's sentence is procedurally unreasonable, because, in his view, the court erroneously applied U.S.S.G. § 2A4.1(b)(5), and is substantively unreasonable under the relevant sentencing factors, codified at 18 U.S.C. § 3553(a). The government moves to dismiss **Silva Ochoa's** appeal, arguing that **Silva Ochoa** knowingly and voluntarily waived his right to appeal as part of his plea agreement. For the reasons we explain, we agree with the government and dismiss the appeal.

We review the validity and scope of an appeal waiver *de novo*. *King v. United States*, 41 F.4th 1363, 1366 (11th Cir. 2022). Sentence appeal waivers are enforceable if they are made

knowingly and voluntarily. *Id.* at 1367. To enforce a waiver, “[t]he government must show that either (1) the district court specifically questioned the defendant concerning the sentence appeal waiver during the Rule 11 colloquy, or (2) it is manifestly clear from the record that the defendant otherwise understood the full significance of the waiver.” *United States v. Bushert*, 997 F.2d 1343, 1351 (11th Cir. 1993); *see also United States v. Boyd*, 975 F.3d 1185, 1192 (11th Cir. 2020) (noting that the “touchstone for assessing” if a sentence appeal waiver was made knowingly and voluntarily “is whether ‘it was clearly conveyed to the defendant that he was giving up his right to appeal under *most* circumstances’ ” (alterations adopted) (emphasis in original) (quoting *Bushert*, 997 F.2d at 1352–53)). “We have consistently enforced knowing and voluntary appeal waivers according to their terms.” *United States v. Bascomb*, 451 F.3d 1292, 1294 (11th Cir. 2006). “An appeal waiver includes the waiver of the right to appeal difficult or debatable legal issues or even blatant error.” *United States v. Grinard-Henry*, 399 F.3d 1294, 1296 (11th Cir. 2005).

Here, **Silva Ochoa** entered into a plea agreement with the government which, relevantly, contained three paragraphs, under Section “E.,” that were titled: “Appellate Waiver,” and read:

15. The defendant is aware that [28 U.S.C. § 1291] and [18 U.S.C. § 3742] afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Sections 1291 and 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the [district c]ourt establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in [18 U.S.C. §] 3742(b) and [28 U.S.C. §] 1291. However, if the United States appeals the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of his right to appeal his sentence.

*2 16. The defendant further hereby waives all rights conferred by [28 U.S.C. §] 1291 to assert any claim that (1) the statute(s) to which the defendant is pleading guilty is/are

unconstitutional; and/or (2) the admitted conduct does not fall within the scope of the statute(s) of conviction.

17. By signing this agreement, the defendant acknowledges that [he] has discussed the appeal waiver set forth in this agreement with the defendant's attorney. The defendant further agrees, together with this Office, to request that the [district c]ourt enter a specific finding that the defendant's waiver of his right to appeal the sentence imposed in this case and his right to appeal his conviction in the manner described above was knowing and voluntary.

The plea agreement also informed **Silva Ochoa** that the district court could “impose a statutory maximum term of imprisonment of up to any term of years or for life, followed by a term of supervised release of up to five years.” The agreement also explained that **Silva Ochoa** was reserving his right to “argue that” enhancements under U.S.S.G. §§ 2A4.1(5) and 3B1.1 should not apply but would agree that U.S.S.G. § 2A4.1(2)(B) applied. He also agreed that none of these recommendations were binding on the district court.

Silva Ochoa signed and dated the plea agreement, and his attorney did so as well. In exchange for **Silva Ochoa's** entering into the plea agreement, the government dismissed several other pending charges against him. At **Silva Ochoa's** plea hearing, he was placed under oath, and he consented to having a magistrate judge conduct the hearing. He confirmed that he was thinking clearly, was not under the influence of any medications, and did not have any physical or mental conditions that would prevent him from understanding the proceedings. He confirmed that he understood that his sentence would “be calculated pursuant to the sentencing guidelines,” which would provide an advisory range. He also agreed that the plea agreement had been translated for him into Spanish, that he had read and discussed each paragraph with his attorney, that he fully understood the agreement, and that he had signed it.

The magistrate judge informed **Silva Ochoa** that the sentence he received could be greater than what he or his counsel had estimated and that the court was “not bound to follow [the] recommendations” in the plea agreement. The magistrate judge also advised him that his plea agreement provided that, “if the court impose[d] sentencing enhancements under the sentencing guidelines for sexual exploitation and g[ave] [him] an aggravating role in the offense, then the government [would] recommend that [he] be sentenced at the low end of the sentencing guidelines range,” and **Silva Ochoa** confirmed that he understood.

The magistrate judge told **Silva Ochoa** that, by pleading guilty, he would be “agree[ing] to give up the right to appeal [his] sentence except under specific circumstances, which are set forth in paragraphs 15 through 17 of [the Appellate Waiver section].” **Silva Ochoa** confirmed that he had discussed the appeal waiver with his attorney. The magistrate judge then explained that, under the plea agreement, **Silva Ochoa** was “agreeing to give up the right to appeal [his] sentence unless one of the following three things happens: [e]ither the government files an appeal; the sentence exceeds the maximum penalty permitted by statute; or the sentence results in an upward departure or variance from the guideline range that the court establishes at [his] sentencing.” **Silva Ochoa** confirmed that he understood that he was “giving up the right to appeal [his] sentence” except for in the situation where “one of those three things happen[ed].”

*3 **Silva Ochoa's** counsel verified that the magistrate judge had accurately summarized the appeal waiver, and the magistrate judge found that the waiver was knowing, voluntary, and fully informed. **Silva Ochoa** confirmed that no one had threatened him, coerced him, or made any promises or assurances to him in exchange for his guilty plea. **Silva Ochoa** pled guilty to Count One.

At the magistrate judge's recommendation, the district court accepted the plea. The magistrate judge's recommendation explicitly noted that **Silva Ochoa** had “acknowledged that he agreed to waive his rights to appeal his sentence, unless the Court sentences [him] above the maximum penalty prescribed by law, the Court varies and/or departs upward from the top of the Sentencing Guidelines range applicable to [him], or the Government appeals [his] sentence.” It also found that **Silva Ochoa** had “knowingly and voluntarily waived his appellate rights.” **Silva Ochoa** did not object to the magistrate judge's recommendation.

“There is a strong presumption that the statements” **Silva Ochoa** “made during” his guilty plea “colloquy [we]re true.” *United States v. Medlock*, 12 F.3d 185, 187 (11th Cir. 1994). Given the magistrate judge's discussion of the appeal waiver provision and its reference to the specific paragraph that contained the waiver's exceptions, we are satisfied that “the district court specifically questioned [**Silva Ochoa**] concerning the sentence appeal waiver,” *Bushert*, 997 F.2d at 1351, and that “it was clearly conveyed to [**Silva Ochoa**] that he was giving up his right to appeal under *most* circumstances,” *Boyd*, 975 F.3d at 1192 (alterations adopted)

(quoting *Bushert*, 997 F.2d at 1352–53). Moreover, the magistrate judge's recommendation explicitly stated that **Silva Ochoa** was waiving his right to appeal and had done so knowingly and voluntarily, and **Silva Ochoa** did not object to that recommendation. Accordingly, we apply the waiver according to its terms.¹

Silva Ochoa resists this conclusion, arguing that the plea agreement was “ambiguous as to [his] right to appeal from a sentence exceeding the guideline range advocated by the defense at sentencing.” However, the plain language of the waiver belies this argument. See *United States v. Hardman*, 778 F.3d 896, 900 (11th Cir. 2014) (“Plea agreements, like contracts, should be interpreted consistent with the parties’ intent. The language of a plea agreement should be given its ordinary and natural meaning unless the parties indicate otherwise.” (citation omitted)). The waiver's exception for “an upward departure and/or an upward variance” applied to the “advisory guideline range that the [district c]ourt establishe[d] at sentencing,” not to the guideline range that **Silva Ochoa** advocated for at sentencing. Moreover, contrary to **Silva Ochoa's** argument that his plea colloquy was “confusing,” the magistrate judge correctly informed **Silva Ochoa** that he was “giv[ing] up the right to appeal [his] sentence except under specific circumstances” and then advised him of these exceptions, including where his “sentence result[ed] in an upward departure or variance from the guideline range that the court establishe[d] at ... sentencing.” Finally, while **Silva Ochoa** is correct that the plea agreement reserved his right to oppose the enhancements he is challenging on appeal, he is incorrect that that reservation of rights applied to his appeal; the plain language of the waiver makes it clear that the reservation applied to the sentencing proceedings, not to any appeal.

*4 **Silva Ochoa's** claims on appeal, which challenge the court's application of sentencing enhancements and the substantive reasonableness of his sentence, fall squarely within the appeal waiver's provision that he was waiving “all rights conferred by [28 U.S.C. §] 1291 and [18 U.S.C. §] 3742 to appeal any sentence imposed.” None of the waiver's exceptions apply. First, **Silva Ochoa's** 327-month sentence and 3-year term of supervised release did not exceed the statutory maximum sentence of life imprisonment or 5 years’ supervised release. See 18 U.S.C. §§ 1201(a), (c), 3559(a)(1), 3583(b)(1).² Second, **Ochoa's** 327-month sentence did not constitute “an upward departure and/or an upward variance from the advisory guideline range that the [district c]ourt establishe[d] at sentencing,” which was 262 to 327 months’

imprisonment, and his 3-year term of supervised release also fell within his guideline range. Finally, the government did not initiate an appeal of **Silva Ochoa's** sentence.

For these reasons, we conclude that **Silva Ochoa** knowingly and voluntarily waived his right to appeal his sentence and his challenges on appeal fall within the scope of that waiver. Accordingly, we **GRANT** the government's motion to dismiss. See *Bascomb*, 451 F.3d at 1294; *Bushert*, 997 F.2d at 1351.³

DISMISSED.

All Citations

Not Reported in Fed. Rptr., 2026 WL 493804

Footnotes

- ¹ We have recognized that, in certain circumstances, we might not apply an otherwise valid appeal waiver. “The most obvious [circumstance] is a jurisdictional defect; an appeal waiver cannot confer jurisdiction on a court where none exists.” *King*, 41 F.4th at 1367. In addition, “[w]e will review a sentence ‘based on a constitutionally impermissible factor such as race.’” *Id.* (quoting *Bushert*, 997 F.2d at 1350 n.18). We have also “suggested that perhaps ‘extreme circumstances’—like a ‘public flogging’ sentence—might justify overlooking an appeal waiver as well.” *Id.* (quoting *United States v. Howle*, 166 F.3d 1166, 1169 n.5 (11th Cir. 1999)). Finally, even if a defendant enters a plea agreement, we will review “a sentence imposed in excess of the maximum penalty provided by statute.” *Id.* (quoting *Bushert*, 997 F.2d at 1350 n.18). In any event, none of these circumstances are present here.
- ² Under 18 U.S.C. § 1201, a defendant convicted of kidnapping “an internationally protected person ... shall be punished by imprisonment for any term of years or for life.” 18 U.S.C. § 1201(a)(4). If two or more persons conspire to violate 18 U.S.C. § 1201 and “do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.” *Id.* § 1201(c). An offense that carries a maximum term of life imprisonment is a Class A felony. *Id.* § 3559(a)(1). Unless otherwise provided, a Class A felony carries a maximum term of supervised release of five years. *Id.* § 3583(b)(1).
- ³ In its motion to dismiss, the government notes that the Supreme Court has granted a petition for writ of *certiorari* in a case that “addresses the limits of appeal waivers agreed to as part of a guilty plea.” See *United States v. Hunter*, No. 24-20211, 2024 WL 5003582 (5th Cir. Dec. 6, 2024), *cert. granted*, No. 24-1063, 2025 WL 2885281 (2025). We remain bound to apply our binding precedent until it is overruled, however. See *Thompson v. United States*, 924 F.3d 1153, 1156 n.4 (11th Cir. 2019) (“[W]e are required to apply ... binding precedent, [and] a grant of *certiorari* does not constitute a change in the law or a basis for relief.”), *abrogated in part on other grounds by United States v. Davis*, 588 U.S. 445 (2019).

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CR-20173-MOORE/LOUIS

UNITED STATES OF AMERICA

vs.

PEDRO JOSE SILVA OCHOA,

Defendant.

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida and the United States Department of Justice, Criminal Division, Human Rights and Special Prosecutions Section (collectively, "this Office") and Pedro Jose Silva Ochoa (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Count One (1) of the indictment, which count charges the defendant with Conspiracy to Kidnap an Internationally Protected Person in violation of Title 18, United States Code, Section 1201(c).

2. This Office agrees to seek dismissal of count(s) Two (2) through Six (6) of the indictment, as to this defendant, after sentencing.

3. The defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory

sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense(s) identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to any term of years or for life, followed by a term of supervised release of up to five years. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to \$250,000 and may order forfeiture and restitution.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this agreement, a special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing. If a defendant is financially unable to pay the special assessment, the defendant agrees to present evidence to this Office and the Court at the time of sentencing as to the reasons for the defendant's failure to pay.

6. This Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses

committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

A. Sentencing Recommendations

7. This Office agrees that it will recommend at sentencing that the Court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, this Office will file a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently.

8. This Office further agrees that, should the Court impose Sentencing Enhancements for both Sexual Exploitation pursuant to Section 2A4.1(5) of the Sentencing Guidelines and Role of the Offense pursuant to Section 3B1.1 of the Sentencing Guidelines, then it will recommend that the defendant be sentenced at the low end of the guideline range, as that range is determined by the Court. Both parties further agree that other than the serious Bodily Injury Enhancement, pursuant to Section 2A4.1(2)(B) of the Sentencing Guidelines, as further discussed below, defense

can still argue that neither enhancement for Sexual Exploitation nor Role of the Offense nor any other enhancements should apply.

9. This Office, however, will not be required to make either this motion or this recommendation if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

B. Serious Bodily Injury

10. This Office and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed: that the defendant should receive a two-level increase as the victims sustained serious bodily injury, pursuant to Section 2A4.1(2)(B) of the Sentencing Guidelines.

C. Substantial Assistance

11. The defendant agrees that he/she shall cooperate fully with this Office by: (a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other Court proceeding; (b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office; and (c) if requested by this Office, working in an undercover role under the supervision of, and in

compliance with, law enforcement officers and agents. In addition, the defendant agrees that he will not protect any person or entity through false information or omission, that he will not falsely implicate any person or entity, and that he that he will not commit any further crimes.

12. This Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make that cooperation, or lack thereof, known to the Court at the time of sentencing. If in the sole and unreviewable judgment of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the Court's downward departure from the advisory sentencing range calculated under the Sentencing Guidelines and/or any applicable minimum mandatory sentence, this Office may make a motion prior to sentencing pursuant to Section 5K1.1 of the Sentencing Guidelines and/or Title 18, United States Code, Section 3553(e), or subsequent to sentencing pursuant to Rule 35 of the Federal Rules of Criminal Procedure, informing the Court that the defendant has provided substantial assistance and recommending that the defendant's sentence be reduced. The defendant understands and agrees, however, that nothing in this agreement requires this Office to file any such motions, and that this Office's assessment of the quality and significance of the defendant's cooperation shall be binding as it relates to the appropriateness of this Office's filing or non-filing of a motion to reduce sentence.

13. The defendant understands and acknowledges that the Court is under no obligation to grant a motion for reduction of sentence filed by this Office. In addition, the defendant further understands and acknowledges that the Court is under no obligation of any type to reduce the defendant's sentence because of the defendant's cooperation.

D. Sentence Not Yet Determined

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14. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, this Office, or the probation office, is a prediction, not a promise, and is not binding on this Office, the probation office or the Court. The defendant understands further that any recommendation that this Office makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw his/her plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, this Office, or a recommendation made jointly by the defendant and this Office.

E. Appellate Waiver

15. The defendant is aware that Title 28, United States Code, Section 1291 and Title 18, United States Code, Section 3742 afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Sections 1291 and 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b) and Title 28, United States Code, Section 1291. However, if the

United States appeals the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of his right to appeal his sentence.

16. The defendant further hereby waives all rights conferred by Title 28, United States Code, Section 1291 to assert any claim that (1) the statute(s) to which the defendant is pleading guilty is/are unconstitutional; and/or (2) the admitted conduct does not fall within the scope of the statute(s) of conviction.

17. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the defendant's attorney. The defendant further agrees, together with this Office, to request that the Court enter a specific finding that the defendant's waiver of his right to appeal the sentence imposed in this case and his right to appeal his conviction in the manner described above was knowing and voluntary.

F. Immigration Warning

18. Defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including the defendant's attorney or the Court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. Defendant nevertheless affirms that the defendant wants to plead guilty regardless of any immigration consequences that the defendant's plea may entail, even if the consequence is the defendant's automatic removal from the United States.

G. Entire Agreement

19. This is the entire agreement and understanding between this Office and the defendant.

There are no other agreements, promises, representations, or understandings.

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

Date: 12/11/24

By: Bertila Fernandez
BERTILA LILIA FERNANDEZ
ASSISTANT UNITED STATES ATTORNEY

NICOLE M. ARGENTIERI
PRINCIPAL DEPUTY ASSISTANT
ATTORNEY GENERAL
HEAD OF THE CRIMINAL DIVISION

Date: 12/11/24

By: Clayton O'Connor
CLAYTON O'CONNOR
TRIAL ATTORNEY

Date: 12/11/24

By: Maria T. Arsuaga
MARIA T. ARSUAGA
ATTORNEY FOR DEFENDANT

Date: 12/11/24

By: Pedro Jose Silva Ochoa
PEDRO JOSE SILVA OCHOA
DEFENDANT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 23-CR-20173-KMM-3

4 UNITED STATES OF AMERICA,

Miami, Florida

5 Plaintiff(s),

December 11, 2024

6 vs.

7 PEDRO JOSE SILVA OCHOA,

8 Defendant(s).

Pages 1 - 33

9 PLEA HEARING
10 TRANSCRIBED FROM DIGITAL AUDIO RECORDING
11 BEFORE THE HONORABLE ELLEN F. D'ANGELO
12 UNITED STATES MAGISTRATE JUDGE
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1 APPEARANCES:

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20 TRANSCRIBED BY: Joanne Mancari, RPR, CRR, CSR
21 Court Reporter
22 jemancari@gmail.com
23
24
25

1 Thereupon,
2 the following proceedings were held:

3 THE DEPUTY CLERK: Calling case of the United States
4 v. Pedro Jose Silva Ochoa, case 23 Criminal 20173.

5 Counsel, please announce your appearance for the
6 record, starting with the government.

7 MR. O'CONNOR: Good morning, your Honor. Clayton
8 O'Connor, from the Department of Justice, Criminal Division,
9 and I'm here with my colleague.

10 MS. FERNANDEZ: Lilia Fernandez on behalf of the
11 United States, your Honor.

12 THE COURT: Good morning, Mr. O'Connor. Good morning,
13 Ms. Fernandez.

14 MS. ARSUAGA: Morning, your Honor. Maria Arsuaga on
15 behalf of Pedro Silva Ochoa.

16 THE COURT: Good morning, Ms.?

17 MS. ARSUAGA: Arsuaga.

18 THE COURT: Arsuaga.

19 MS. ARSUAGA: Yes.

20 THE COURT: Good morning, Ms. Arsuaga. Good morning,
21 Mr. Silva Ochoa.

22 THE DEFENDANT: Good morning, your Honor.

23 THE COURT: Mr. Silva Ochoa, I see that you're using
24 the services of the interpreter.

25 Madam interpreter, would you please state your name

1 for the record.

2 THE DEFENDANT: Yes, your Honor. Consuelo Burranca.

3 THE COURT: Thank you.

4 Mr. Silva Ochoa, is everything that I'm saying being
5 translated fluently for you in your native language?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: If at any time there is any issue with the
8 translation, please let me know.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: I understand that we are here today for a
11 change of plea.

12 Are the parties ready to proceed?

13 MR. O'CONNOR: Yes, your Honor.

14 MS. ARSUAGA: Yes, your Honor.

15 THE COURT: And I have fully-executed plea documents
16 that were left for me.

17 Are these the same documents that have previously been
18 submitted to chambers?

19 MS. FERNANDEZ: Yes, your Honor. The only difference
20 is on the plea agreement I added our names, realized our titles
21 were present but not our names at the signature lines.

22 THE COURT: But otherwise the substance is the same.

23 MS. FERNANDEZ: That's correct.

24 THE COURT: Thank you.

25 Lastly, has the government advised the victims in this

1 case of this hearing and the right to attend if they wanted to
2 be present?

3 MR. O'CONNOR: Yes, your Honor.

4 THE COURT: And will any victims be requesting any
5 opportunity to be heard during this hearing?

6 MR. O'CONNOR: Not during this hearing, your Honor.

7 THE COURT: Thank you.

8 If you could please swear the defendant.

9 THE DEPUTY CLERK: Please raise your right hand.

10 Do you solemnly swear or affirm the testimony you will
11 give in this cause will be the truth, the whole truth, and
12 nothing but the truth so help you God?

13 THE DEFENDANT: Yes, I do swear.

14 THE COURT: Mr. Silva Ochoa, thank you. You can be
15 seated.

16 I want to make sure that you understand that you have
17 now been placed under oath, which means that if you answer any
18 of my questions falsely, your answers may later be used against
19 you in another prosecution for perjury or making a false
20 statement.

21 Do you understand that you are now under oath?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: We're here today because you have
24 requested to change your plea from not guilty to guilty.

25 I'm going to ask you several questions. The purpose

1 of my questions is to make sure that you understand what's
2 happening today, that you know what your options are, that
3 you know what rights you are giving up by entering a guilty
4 plea, that you understand the possible penalties that you face,
5 and that there are sufficient facts to support your guilty
6 plea.

7 Do you understand that that's the purpose of my
8 questioning today?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: If at any time during my questions you
11 would like an opportunity to speak with your attorney, that's
12 fine; just ask and I'll give you a moment to speak privately.

13 THE DEFENDANT: Thank you, your Honor.

14 THE COURT: Additionally, if you don't understand any
15 question that I ask you, then let me know and I will try to ask
16 you the question differently.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Mr. Silva Ochoa, I am not the judge that
19 is assigned to your overall case, which means that I am not the
20 judge who is going to sentence you if your guilty plea is
21 accepted by the court. That judge is Judge Moore. Judge Moore
22 referred this matter to me today to hear the change of plea.

23 Because the charge you face is a felony, you have the
24 right to have the district judge conduct this change-of-plea
25 hearing. If you want, however, you can agree to let me conduct

1 this change-of-plea hearing, but you do not have to agree.

2 If you agree to allow me to conduct this
3 change-of-plea hearing and your plea is accepted by the court,
4 the procedure going forward, including how your sentencing will
5 be conducted by Judge Moore, is exactly the same.

6 Have you had a chance to speak with your attorney
7 about having me conduct this hearing instead of the district
8 judge?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And understanding that you have the right
11 to have the district judge conduct this hearing, do you agree
12 to allow me to do it instead?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Government, any objection to me conducting
15 the change-of-plea hearing?

16 MR. O'CONNOR: No, your Honor.

17 THE COURT: Ms. Arsuaga.

18 MS. ARSUAGA: No, your Honor.

19 THE COURT: Additionally, you will see that we have no
20 court reporter; however, the proceedings are being recorded on
21 the court's audio recording system and a transcript could be
22 made available afterwards.

23 Is there any objection to the government from
24 proceeding that way?

25 MR. O'CONNOR: No, your Honor.

1 THE COURT: Defense.

2 MS. ARSUAGA: No, your Honor.

3 THE COURT: Mr. Silva Ochoa, could you please state
4 your full name.

5 THE DEFENDANT: Pedro Jose Silva Ochoa.

6 THE COURT: Have you ever been known by any other
7 names or aliases?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: How old are you?

10 THE DEFENDANT: 47 years old.

11 THE COURT: Where were you born?

12 THE DEFENDANT: In Bogotá, Colombia.

13 THE COURT: Are you a U.S. citizen?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: What is your country of citizenship?

16 THE DEFENDANT: Colombia.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: Eighth grade, high school.

19 THE COURT: Can you read and write in Spanish?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Can you read and write in English?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Have you ever been treated for any mental
24 illness or addiction to alcohol or narcotic drugs of any kind?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: Are you currently under the care or
2 treatment of any physician, psychologist, or psychiatrist?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Do you believe that you have any physical
5 or mental condition or illness which would prevent you from
6 understanding what is happening today in court?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Have you taken any medication in the last
9 48 hours?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Do you feel like you are thinking clearly
12 and fully understanding what's happening?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Ms. Arsuaga, is there any reason why the
15 defendant wouldn't be competent to proceed at this time?

16 MS. ARSUAGA: No, your Honor.

17 THE COURT: Government.

18 MR. O'CONNOR: No, your Honor.

19 THE COURT: Based on my observations of Mr. Silva
20 Ochoa and his responses to my questions, I find that he is
21 alert and competent to proceed.

22 Mr. Silva Ochoa, have you received a copy of the
23 indictment pending against you and have you fully discussed the
24 charges and the case with your attorney?

25 THE DEFENDANT: I have spoken with her about the

1 charges, but I have not received any copy of it in my language.

2 THE COURT: Have you reviewed a copy of the indictment
3 with your attorney?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And did she review it with you in your
6 native Spanish?

7 THE DEFENDANT: No, your Honor. Did she read it to me
8 in Spanish, yes, yes, yes, yes, your Honor.

9 THE COURT: Ms. Arsuaga, if you could just clarify for
10 the record if you went over the indictment with Mr. Silva Ochoa
11 and if you either had it translated for him or you translated
12 it for him. If you translated it for him, please state on the
13 record your fluency in Spanish.

14 MS. ARSUAGA: Yes, your Honor. I read it to him
15 myself in Spanish. My native language is Spanish. I'm from
16 Puerto Rico. So I did it myself, and it was fully translated
17 by myself.

18 THE COURT: Thank you.

19 Mr. Silva Ochoa, do you agree with what your attorney
20 just said about translating the indictment for you and
21 reviewing it with you in Spanish?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Silva Ochoa, have you had enough time
24 to think about changing your plea and talk about it with your
25 lawyer?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did you and your lawyer review the
3 evidence that the government says it has against you and it
4 would use to prove your case at a trial?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you and your lawyer discuss possible
7 defenses that you might have to the charges, including
8 witnesses you might be able to call on your behalf or other
9 legal charges that you might be -- I'm sorry, or other legal
10 challenges that you might be able to make to the government's
11 case or the government's evidence?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Are there any questions about your case
14 that you've asked but your lawyer has not sufficiently answered
15 for you?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Is there anything concerning your lawyer's
18 representation that you are not satisfied with?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: In fact, are you fully satisfied with your
21 attorney and the advice and representation that she has given
22 you in this case?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Mr. Silva Ochoa, I want to discuss with
25 you the maximum penalties that you can face in pleading guilty

1 to Count One of the indictment, which charges you with
2 conspiracy to kidnap an internationally protected person, in
3 violation of Title 18, United States Code, Section 1201(c).

4 The maximum term of imprisonment that you could face
5 is up to life imprisonment, followed by a term of up to five
6 years of supervised release, and a fine of up to \$250,000.

7 Do you understand that those are the maximum penalties
8 you can face for pleading guilty to Count One?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: If you are not a United States citizen,
11 your conviction of this offense could be used to remove you
12 from the United States, deny you citizenship within the United
13 States, and deny admission to the United States in the future.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Parole has been abolished, so you will not
17 be given parole, and probation is not available in this case.

18 Do you understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Supervised release is a period of time
21 after incarceration when you have to comply with conditions set
22 by the court. During that time you will have to report to a
23 probation officer.

24 Do you understand that if you violate the terms of
25 your supervised release you could be given additional jail

1 time?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: The court may also require you to forfeit
4 certain property to the government.

5 Ms. Fernandez, is the government seeking forfeiture in
6 this case at this time?

7 MS. FERNANDEZ: No, your Honor, we are not.

8 THE COURT: The court may also require you, Mr. Silva
9 Ochoa, to pay restitution to any victim of the offense.

10 Do you understand that that is something that may be
11 part of your sentence?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Because the possible sentence that you
14 face is more than a year in prison, you will be adjudged guilty
15 of a felony and the adjudication may deprive you of certain
16 valuable civil rights, such as the right to vote, the right to
17 hold public office, the right to serve on a jury, and the right
18 to possess any kind of firearm. If you hold any professional
19 license in the United States, a conviction of a felony could
20 also cause you to lose that license.

21 Do you understand that by pleading guilty you are
22 giving up these valuable civil rights?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: By pleading guilty you are also taking the
25 risk that the district judge will sentence you to the maximum

1 penalty allowed under law.

2 As we sit here today no one knows what your sentence
3 will be, but do you understand that as long as your sentence
4 does not exceed the maximum penalty, you will not be allowed to
5 take back your plea if you are not happy with the sentence that
6 you receive?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Mr. Silva Ochoa, you have indicated that
9 you wish to change your plea to guilty and that you do not want
10 a trial, but do you understand, sir, that you have a right to
11 persist in your plea of not guilty to any offense charged
12 against you, and if you did persist in that plea, you would
13 have a right to trial by jury if you wanted it?

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And if you did want to go to trial, do you
17 understand that at that trial you would be presumed innocent
18 and that the government would have to prove your guilt beyond a
19 reasonable doubt?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Additionally, at trial you would have the
22 right to counsel, appointed if necessary, by the court, at that
23 trial and at every other stage of your proceedings.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And if you wanted to go to trial, you

1 would have the right to confront witnesses, to see and hear
2 them and cross-examine them in your defense. You would also
3 have the right to compel the attendances of witnesses on your
4 behalf at that trial.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: At a trial you would have the right to
8 remain silent and decide not to testify.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And if you decided not to testify at a
12 trial or put on any evidence at all, that could not be used
13 against you.

14 Do you understand?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Conversely, if you went to trial, you
17 would have a right to testify at that trial if you wished to do
18 so.

19 Do you understand?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Lastly, you would have the right if
22 convicted after a trial to appeal the conviction and the jury's
23 finding of guilt.

24 Do you understand?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: But by pleading guilty, if the court
2 accepts your guilty plea, there will be no trial and you will
3 have given up your right to go to trial as well as all of the
4 other rights that I just discussed.

5 Do you understand?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Mr. Silva Ochoa, have you had an
8 opportunity to talk with your attorney about the sentencing
9 guidelines and how they might apply to your case?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that your sentence will
12 be calculated pursuant to the sentencing guidelines which will
13 essentially assign you a suggested range of punishment based on
14 the offense, certain characteristics related to your offense,
15 and your criminal history?

16 Do you understand that that's very generally how the
17 sentencing guidelines work?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: If your guilty plea is accepted by the
20 court, the probation office will prepare a presentence
21 investigation report for the district judge. Part of that
22 report will be the probation officer's recommendation as to
23 what the correct range of your sentencing guidelines is. If
24 you don't agree, you will have a chance to object and have the
25 district judge decide what the proper range is under the

1 sentencing guidelines.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: The sentencing guidelines are only one of
5 several factors that the district judge must take into account
6 when sentencing you. After considering all of the required
7 factors, the district judge might impose a sentence within the
8 advisory sentencing guidelines range or he might impose a
9 sentence that is above that range or below that range.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: The district judge may impose a sentence
13 greater than what you or your lawyer have estimated. What I
14 want to make sure you understand is that if the district judge
15 gives you a sentence higher than what you were hoping for, you
16 will not be able to withdraw your guilty plea because your
17 sentence is not what you had hoped for.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Ms. Arsuaga, were all plea offers
21 communicated to the defendant?

22 MS. ARSUAGA: Yes, your Honor.

23 THE COURT: Mr. Silva Ochoa, I'm holding a document
24 that is eight pages entitled Plea Agreement. There is a line
25 on the last page with your name.

1 Did you sign the document called Plea Agreement?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And was this document translated for you
4 into Spanish?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you have an opportunity to go through
7 this document with your attorney and discuss each and every
8 paragraph contained within the document before you signed it?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Did your attorney answer all of your
11 questions about the plea agreement?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you believe that you fully understand
14 the plea agreement?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that the plea agreement
17 contains recommendations to the district judge but that the
18 district judge is not bound to follow those recommendations?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And if the district judge does not follow
21 those recommendations, you will not be able to withdraw your
22 guilty plea as a result.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Silva Ochoa, I'm not going to go

1 through every provision of the plea agreement, but I do want to
2 talk about a few of them just to make sure that you understand
3 what's contained in the document.

4 In paragraph 1 of your plea agreement, it states the
5 count to which you are pleading guilty, which is conspiracy to
6 kidnap internationally protected persons, in violation of Title
7 18, United States Code, Section 1201(c).

8 Do you understand that that's the charge to which you
9 are pleading guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Paragraph 2 of the plea agreement states
12 that the government agrees to voluntarily dismiss Counts Two
13 through Six of the indictment at sentencing.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Paragraph 4 of the plea agreement talks
17 about the maximum penalties that you face for pleading guilty
18 to Count One of the indictment, which we have already
19 discussed.

20 Do you understand the maximum penalties that you face
21 by pleading guilty to this charge?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Paragraph 5 of the plea agreement states
24 that, in addition to the maximum penalties, you are also
25 subject to a mandatory special assessment of \$100 in this case.

1 Do you understand?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Paragraphs 7 through 10 of your plea
4 agreement contain sentencing recommendations that the parties
5 will be making to the district judge at the time of your
6 sentencing. Specifically, paragraph 7 states that the
7 government is agreeing to recommend that you get a two-level
8 reduction in your offense level under the sentencing guidelines
9 for your timely acceptance of responsibility. If your offense
10 level is determined to be 16 or above, the government will
11 request an additional one-level reduction, for a total of a
12 three-level reduction.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Paragraph 8 states that if the court
16 imposes sentencing enhancements under the sentencing guidelines
17 for sexual exploitation and gives you an aggravating role in
18 the offense, then the government will recommend that you be
19 sentenced at the low end of the sentencing guidelines range.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Paragraph 9 states that the government
23 will not make these recommendations if you refuse to make a
24 full, accurate, and complete disclosure to the probation
25 officer of the offense conduct, if you misrepresented facts to

1 the government prior to entering into the plea agreement, or if
2 you commit misconduct after entering into the plea agreement.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Paragraph 10 states that the parties will
6 jointly recommend to the court that you receive a two-level
7 enhancement under the sentencing guidelines for the victims
8 sustaining serious bodily injury.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Paragraphs 11 through 13 of the plea
12 agreement state that you have agreed to fully cooperate with
13 the government. As a result, the government may file a motion
14 to reduce your sentence based on substantial assistance.

15 I need to explain a couple of things about this.

16 First, the government is the only one that can make a
17 motion to reduce your sentence based on substantial assistance.
18 Your lawyer cannot make that motion and the court can't order
19 the government to file that motion.

20 Second, even if the government does make that motion,
21 the district judge does not have to grant it.

22 Third, even if the district judge does grant the
23 motion to reduce your sentence, he does not have to follow the
24 government or your recommendation for how much of a reduction
25 you should get.

1 So if any of those things happen -- no motion is
2 filed, the motion is filed but denied, or you receive less of a
3 recommendation than the parties recommend -- you will not be
4 able to withdraw your guilty plea for that reason.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: You have also agreed to give up the right
8 to appeal your sentence except under specific circumstances,
9 which are set forth in paragraphs 15 through 17 of your plea
10 agreement.

11 Have you discussed the appeal waiver with your lawyer?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You understand that if you go to trial and
14 get convicted, you can appeal your conviction and you can
15 appeal the sentence. However, if you plead guilty, you cannot
16 appeal the conviction because you are admitting your guilt.

17 Under the plea agreement, you are agreeing to give up
18 the right to appeal your sentence unless one of the following
19 three things happens: Either the government files an appeal;
20 the sentence exceeds the maximum penalty permitted by statute;
21 or the sentence results in an upward departure or variance from
22 the guideline range that the court establishes at your
23 sentencing.

24 Do you understand that unless one of those three
25 things happens you are giving up the right to appeal your

1 sentence?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Government, have I accurately summarized
4 the appellate waiver in the plea agreement?

5 MR. O'CONNOR: Yes, your Honor.

6 THE COURT: Defense.

7 MS. ARSUAGA: Yes, your Honor.

8 THE COURT: I find that the appeal waiver is knowing
9 and voluntary and fully informed.

10 The final paragraph of your plea agreement, Mr. Silva
11 Ochoa, says that there are no other promises or agreements
12 other than that which is contained in this plea agreement.

13 Are there any other agreements that you are aware of
14 besides what's contained in the written plea agreement?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Does the plea agreement represent in its
17 entirety every understanding that you have with the government?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Has anyone made any promises or assurances
20 to you to get you to plead guilty that are not contained within
21 the plea agreement?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Has anyone threatened you in any way or
24 tried to coerce you to plead guilty?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: Mr. Silva Ochoa, every crime is made up of
2 elements or parts which the government must prove beyond a
3 reasonable doubt. I'm going to ask the government to state the
4 elements of the crime to which you are pleading guilty.

5 Ms. Fernandez.

6 MS. FERNANDEZ: In order to prove its case beyond a
7 reasonable doubt for conspiracy to kidnap internationally
8 protected persons, the government would need to prove that an
9 agreement existed between two or more persons to commit the
10 crime of kidnapping, the defendants knowingly and voluntarily
11 joined or participated in the venture, and an overt act was
12 committed by at least one of their coconspirators in
13 furtherance of the kidnapping conspiracy.

14 For jurisdictional purposes, the victims were
15 internationally protected persons and the victims are
16 representatives, officers, employees, or agents of the United
17 States.

18 THE COURT: Thank you.

19 Mr. Silva Ochoa, do you understand each essential
20 element of the crime to which you are pleading guilty?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: There was also a document submitted to me
23 titled Factual Proffer, and at the end of this document it also
24 has a line with your name underneath it.

25 Did you sign the document entitled Factual Proffer?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And did your attorney review every word of
3 this document with you in your native Spanish?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Ms. Arsuaga, was this document translated
6 for Mr. Silva Ochoa either orally, in writing, by you or
7 someone else into Spanish?

8 MS. ARSUAGA: Yes, your Honor. It was done orally by
9 myself.

10 THE COURT: Thank you.

11 Mr. O'Connor or Ms. Fernandez, could one of you please
12 summarize the factual basis upon which the plea is based.

13 MS. FERNANDEZ: Yes, your Honor.

14 The defendant Pedro Silva Ochoa, his counsel, and the
15 United States agree that had this case proceeded to trial, the
16 United States would have proven the following facts, among
17 others, beyond a reasonable doubt:

18 Prior to and after March 5th and 6th, 2020, in Bogotá,
19 Colombia, and other places, the defendant conspired with
20 Jefferson Arango Castellanos and Kenny Julieth Uribe Chiran,
21 collectively the conspirators, and others to unjustly enrich
22 themselves through, among those things (a) targeting
23 individuals in Bogotá, Colombia; incapacitating, intoxicating,
24 or otherwise rendering them defenseless with drugs or alcohol,
25 including by using benzodiazepines; kidnapping, seizing,

1 abducting, holding, and carrying them away; stealing their
2 possessions and valuables, and obtaining their credit and debit
3 card information; and using the stolen possessions, valuables,
4 and information for the conspirators' personal benefit.

5 As part of their conspiracy, the conspirators and
6 other coconspirators would visit high-end entertainment
7 neighborhoods in Bogotá to identify potential targets. They
8 would incapacitate, intoxicate, and otherwise render their
9 targets defenseless by drugging them. The conspirators and
10 other coconspirators would then kidnap, hold, and carry away
11 their targets, touch, handle, and hold them, and steal their
12 possessions and valuables, and obtain their credit card and
13 debit card information.

14 They would then utilize the individuals' stolen credit
15 cards and debit cards and debit and credit card information to
16 withdraw money from ATMs throughout Bogotá, purchase goods, and
17 execute transactions on the stolen cards.

18 They would then drop off the individuals around Bogotá
19 and, in the process, touch handle, and physically leave them on
20 the side of the road.

21 On and around March 5th and 6th, 2020, Victim One and
22 Victim Two (collectively, "the Victims") were active-duty
23 members of the United States military. As part of their
24 official duties they were sent to Bogotá, Colombia, including
25 during the events of March 5th and 6th, 2020.

1 During their time in Bogotá, Victim One and Victim Two
2 were internationally protected persons, as defined by 18
3 U.S.C., Sections 112(c), 1201(a)(4), and 1116(b).

4 On the evening of March 5, 2020, the defendant picked
5 up Arango Castellanos and Uribe Chiran in a green Renault 9 and
6 brought them to the Zona T area in Bogotá. After arriving in
7 the Zona T area, the defendant dropped off Arango Castellanos
8 and Uribe Chiran, while he remained in the car.

9 The same night, March 5, 2020, the victims were also
10 out in the Zona T neighborhood, eventually going to the
11 Colombian Pub, where Arango Castellanos and Uribe Chiran also
12 were.

13 At some point Arango Castellanos and Uribe Chiran
14 approached the victims in the pub and, without their knowledge,
15 incapacitated, intoxicated, and otherwise rendered the victims
16 defenseless by putting drugs, later identified as
17 benzodiazepines, in their drinks.

18 Around 2:30 a.m., on March 6, 2020, Arango Castellanos
19 and Uribe Chiran left the Colombian Pub with the victims. As
20 the victims walked, they stumbled and had difficulty keeping
21 their balance. At one point, as Victim One struggled to walk,
22 Uribe Chiran put her arm around his waist and he had his arm on
23 her shoulder.

24 Arango Castellanos and Uribe Chiran walked with the
25 victims several blocks to meet the defendant in the green

1 Renault 9. Arango Castellanos, Uribe Chiran, and the victims
2 all the entered the car with the defendant, who then drove
3 away.

4 While the victims were intoxicated, the coconspirators
5 took their possessions, including their wallets, debit cards,
6 credit cards, and cell phones. Arango Castellanos further
7 manipulated Victim Two into providing him with Victim Two's
8 debit card pin code.

9 After taking the victims' possessions and Victim Two's
10 debit card information, the conspirators drove around Bogotá,
11 Colombia, using and attempting to use Victim Two's ATM card and
12 Victim One's credit card.

13 Around 6:45 a.m., the conspirators dropped off Victim
14 One onto a street, where he stumbled and fell. Arango
15 Castellanos then lifted Victim One off the street and guided
16 him back to the sidewalk before leaving Victim One there.

17 An individual saw Victim One stumbling and falling and
18 reported it to the police.

19 At some point in the early morning of March 6, the
20 conspirators dropped off Victim Two in the same neighborhood as
21 where they dropped off Victim One.

22 A taxicab driver found Victim Two and helped him to
23 get to his apartment building.

24 U.S. Department of Defense personnel located Victim
25 Two at his apartment in the afternoon of March 6, 2020 and took

1 him to the hospital.

2 The United States has jurisdiction over these crimes,
3 pursuant to 18, U.S.C., Section 112(e) and Section 1201(e)
4 because the victims were internationally protected persons and
5 representatives, officers, employees, or agents of the United
6 States.

7 THE COURT: Thank you.

8 Mr. Silva Ochoa, did you hear the government's facts
9 that were just set forth?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And do you agree that they are accurate
12 and true?

13 THE DEFENDANT: Your Honor, can I speak with my
14 attorney, please?

15 THE COURT: Yes. Please take a minute.

16 (Pause)

17 THE COURT: Are we ready to proceed?

18 MS. ARSUAGA: Yes, your Honor.

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Mr. Silva Ochoa, do you agree that the
21 facts set forth by the government are accurate and true?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Ms. Arsuaga, do you agree that the
24 government has a sufficient factual basis to support the plea
25 of guilty to Count One?

1 MS. ARSUAGA: Yes, your Honor.

2 THE COURT: I find that the facts the government set
3 forth are sufficient to establish the crime of conspiracy to
4 kidnap an internationally protected person, in violation of
5 Title 18, United States Code, Section 1201(c).

6 Mr. Silva Ochoa, have you had enough time to consider
7 and discuss with your attorney whether you wish to plead guilty
8 to Count One of the indictment?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Ms. Arsuaga, is there anything that I have
11 failed to ask your client with respect to his change of plea?

12 MS. ARSUAGA: No, your Honor.

13 THE COURT: Mr. O'Connor or Ms. Fernandez, is there
14 anything that I failed to ask with respect to the change of
15 plea?

16 MS. FERNANDEZ: No, your Honor.

17 THE COURT: Mr. Silva Ochoa, how do you now plead to
18 Count One of the indictment? Guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: Ms. Arsuaga, are you satisfied that
21 Mr. Silva Ochoa understands the charges and consequences of his
22 guilty plea?

23 MS. ARSUAGA: Yes, your Honor.

24 THE COURT: Mr. O'Connor, Ms. Fernandez, is there any
25 reason you know of that I should not accept this guilty plea?

1 MS. FERNANDEZ: No, your Honor.

2 THE COURT: I find that Mr. Silva Ochoa is alert and
3 intelligent, that he is fully competent and capable of entering
4 an informed plea in this case, that Mr. Silva Ochoa is aware of
5 the nature of the charges against him and the consequences of
6 his guilty plea, and that the plea of guilty is a knowing and
7 voluntary plea supported by an independent basis in fact
8 containing each of the essential elements of the offense to
9 which he is pleading guilty.

10 I also find that Mr. Silva Ochoa has freely,
11 voluntarily, and intelligently entered his plea of guilty today
12 with no promises other than those set forth in the plea
13 agreement and no threats and without any mental impediment of
14 any kind.

15 In addition, I find that Mr. Silva Ochoa has had the
16 advice and counsel of a competent lawyer, with whom he says he
17 is satisfied.

18 I'm going to recommend to the district court that they
19 accept Mr. Silva Ochoa's plea and adjudicate Mr. Silva Ochoa
20 guilty of conspiracy to kidnap an internationally protected
21 person as pled in Count One of the indictment.

22 Mr. Silva Ochoa, I want to explain to you a little bit
23 about the procedure going forward.

24 A written presentence investigation report is going to
25 be prepared by the probation office to assist Judge Moore in

1 your sentencing. You will be asked to give information to the
2 probation officer for the report, and your attorney may be
3 present with you during that interview if you wish.

4 Your failure to cooperate and be truthful with the
5 probation officer could have consequences for you. You can
6 discuss that with your attorney.

7 You and your attorney shall have the opportunity to
8 read the presentence investigation report and file any
9 objections that you may have to it before your sentencing.

10 You and your attorney will also have an opportunity to
11 speak on your behalf at your sentencing hearing if you choose
12 to.

13 If there are any victims of the offense, victims will
14 also have an opportunity to be heard, if they would like.

15 I am now going to refer Mr. Silva Ochoa to the
16 probation office for preparation of a presentence investigation
17 report.

18 The sentencing date is going to be set by separate
19 order from Judge Moore.

20 I would remind the parties that if you anticipate that
21 the sentencing is going to be longer than 30 minutes to please
22 notify Judge Moore's chambers in advance.

23 Lastly, if the parties have no objection, I would like
24 to shorten the period for objections to the Report and
25 Recommendation. I will issue the Report and Recommendation to

1 Judge Moore to accept Mr. Silva Ochoa's guilty plea hopefully
2 today, by tomorrow at the latest.

3 Do the parties have any objection to shortening the
4 objection period to that Report and Recommendation to three
5 days?

6 Government.

7 MS. FERNANDEZ: Not from the government, your Honor.

8 THE COURT: Defense.

9 MS. ARSUAGA: No, your Honor.

10 THE COURT: OK. So then the objection period will be
11 shortened from today and you will have three business days to
12 object to the Report and Recommendation, if you have any, which
13 will take you until December 16th of 2024 to file your
14 objections.

15 Government, is there anything else that we need to do
16 today?

17 MS. FERNANDEZ: Not for the government, your Honor.

18 THE COURT: Thank you.

19 Defense.

20 MS. ARSUAGA: No, your Honor. Thank you.

21 THE COURT: Thank you very much to the parties.

22 Mr. Silva Ochoa, good luck to you, sir.

23 THE DEFENDANT: Thank you very much.

24 (Adjourned)
25

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription to the best of my ability of the digital audio recording in the above-entitled matter.

May 4, 2025

s/ Joanne Mancari
Joanne Mancari, RPR, CRR, CSR
Court Reporter
jemancari@gmail.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA

v.

KENNY JULIETH URIBE CHIRAN§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **1:23-CR-20173-KMM(2)**§ USM Number: **13883-506**

§

§ Counsel for Defendant: **Orlando do Campo**§ Counsel for United States: **Bertila Lilia Fernandez****THE DEFENDANT:**

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the Indictment
☐	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 this offense:

Title & Section / Nature of Offense

18 U.S.C. § 1201(c) / Conspiracy to Kidnap an Internationally Protected Person

Offense Ended

03/06/2020

Count

1

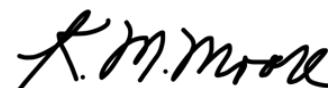
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☒ Count(s) 2 through 6 ☒ 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.

May 22, 2025

Date of Imposition of Judgment



Signature of Judge

K. MICHAEL MOORE**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

May 22, 2025

Date

DEFENDANT: KENNY JULIETH URIBE CHIRAN
CASE NUMBER: 1:23-CR-20173-KMM(2)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **262 months as to Count 1.**

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

☒ 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: KENNY JULIETH URIBE CHIRAN
CASE NUMBER: 1:23-CR-20173-KMM(2)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3) 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.

DEFENDANT: KENNY JULIETH URIBE CHIRAN
CASE NUMBER: 1:23-CR-20173-KMM(2)

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. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: KENNY JULIETH URIBE CHIRAN
CASE NUMBER: 1:23-CR-20173-KMM(2)

SPECIAL CONDITIONS OF SUPERVISION

Association Restriction: The defendant is prohibited from associating with the codefendants while on supervised release.

Financial Disclosure Requirement: The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Surrendering to Immigration for Removal After Imprisonment: At the completion of the defendant's term of imprisonment, the defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, the defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of supervised release, the defendant is to report to the nearest U.S. Probation Office within 72 hours of the defendant's arrival.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: KENNY JULIETH URIBE CHIRAN
CASE NUMBER: 1:23-CR-20173-KMM(2)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$24,115.00	\$.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 \$ 24,115.00
- ☐ 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:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$24,115.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** 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: KENNY JULIETH URIBE CHIRAN
CASE NUMBER: 1:23-CR-20173-KMM(2)

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.

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. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 23-cr-20173-KMM-3

4 UNITED STATES OF AMERICA,) Miami, Florida
5)
6 Plaintiff,) March 5, 2025
7 vs.) 2:00 PM - 3:12 PM
8 PEDRO JOSE SILVA OCHOA,)
9 Defendant.) Pages 1 to 49
_____)

10 TRANSCRIPT OF SENTENCING
11 HELD BEFORE THE HONORABLE K. MICHAEL MOORE
12 UNITED STATES DISTRICT JUDGE

13 FOR THE GOVERNMENT:

14 CLAYTON H. O'CONNOR, AUSA
15 United States Attorney's Office

16 ON BEHALF OF THE DEFENDANT:

17 MARIA T. ARSUAGA, ESQ.
18 Maria T. Arsuaga, P.A.

19 ALSO PRESENT: Mercedes Sornoza, US Probation

20 LANCE W. STEINBEISSER, FCRR, RPR, FPR-C
21 Federal Certified Realtime Reporter
22 United States District Court
23 400 North Miami Avenue
24 Miami, Florida 33128
25 305.523.5633

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 (Call to the Order of the Court.)

2 THE COURT: Calling Case 23-cr-20173, United States
3 versus Pedro Jose Silva Ochoa.

4 Counsel, state your appearances for the record,
5 beginning with the Government.

6 MR. O'CONNOR: Good afternoon, Your Honor. Clayton
7 O'Connor for the United States.

8 THE COURT: Good afternoon.

9 MS. ARSUAGA: Good afternoon, Your Honor. Maria
10 Arsuaga for Mr. Silva Ochoa.

11 THE COURT: Good afternoon. Have a seat.

12 Okay. We're here for sentencing. Do you want to
13 take up your objections?

14 MS. ARSUAGA: Yes, Your Honor. Would you like us to
15 remain seated here?

16 THE COURT: Whatever you're comfortable with.

17 MS. ARSUAGA: Your Honor, at this time, we would just
18 renew the objections that we made in our pleadings, in Docket
19 Entries 153 and 162.

20 THE COURT: Well, let's start, then --

21 MS. ARSUAGA: Yes, Your Honor.

22 THE COURT: I'm going to the addendum to the
23 presentence report. And I'll take up the defense first, but
24 you also had a single objection; right?

25 MR. O'CONNOR: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. O'CONNOR: They're integrated, though. I think
3 you'll address them in the same issue.

4 THE COURT: Okay.

5 The defendant objects to paragraphs 24, 26, 78, 82,
6 and 122, an objection to the enhancement for sexual
7 exploitation of a victim under 2A4.1, as well as the resulting
8 guideline calculations. The defendant objects to the
9 paragraphs related to this enhancement based on their factual
10 inaccuracy and submits that the evidence does not support by a
11 preponderance of the evidence that the victims were sexually
12 exploited. Right?

13 So do you want to add anything?

14 MS. ARSUAGA: Your Honor, just beginning, briefly, on
15 paragraph 24 of the PSR -- the amended PSR, the final one, we
16 would request that the word "another" be deleted from "another
17 rape test." So far as in the middle of the paragraph where it
18 says it on March 9, "Further testing and another rape test was
19 done," that is incorrect. That was the first time there was a
20 rape test done.

21 THE COURT: Does the Government agree with that?

22 MR. O'CONNOR: Yes, Your Honor.

23 THE COURT: Okay. So just for my own edification,
24 where did the probation office get the word "another" from or
25 suggesting a second rape test? Do we know?

1 THE PROBATION OFFICER: Okay. So, Your Honor, the
2 first sentence in the middle of the paragraph says, "LG
3 indicated he and EL both went back to the hospital for
4 additional testing and to get a rape test. LG believed this
5 was on March 9 where further testing and another rape test was
6 conducted." I guess the word "another" is just because they
7 were both getting the rape test.

8 THE COURT: Okay.

9 THE PROBATION OFFICER: So the first rape test was
10 for LG and then the other rape test was for EL, but the word
11 can be eliminated, Your Honor.

12 THE COURT: All right. So we'll go ahead and delete
13 that "another."

14 MS. ARSUAGA: Yes, Your Honor. Thank you.

15 THE COURT: Okay.

16 MS. ARSUAGA: Your Honor, the reason that we continue
17 to object to paragraph 24, we don't dispute the facts insofar
18 as the Government provided more information saying that on
19 March 7th, both victims indicated that they had pain in their
20 perianal area. We would just like it incorporated also that
21 on March 9, 2020, when they both went for further testing, on
22 that occasion, LG indicated to the hospital that he went
23 because the other victim had said that he had anal pain, and
24 that's the reason he went.

25 And that would be in Bates Stamp 2186, Your Honor,

1 which is the translation 50 and 89 of the medical records. So
2 we would just ask --

3 THE COURT: Which one is it? Page --

4 MS. ARSUAGA: 2186 of the Spanish, but it would be
5 the translation at the top where it says numbers -- 50 or 89
6 because they're repeated.

7 THE COURT: 50 or 89?

8 MS. ARSUAGA: Yes. It's the same. For some reason,
9 they're duplicates.

10 THE COURT: Okay. I just want to make sure that I'm
11 at the -- I have the medical records in front of me, but
12 page 50 of 185 is -- am I looking at the right thing? It's
13 just a blank page.

14 MS. ARSUAGA: No. 50 should be at the top, Your
15 Honor. I have to find it on the computer.

16 THE INTERPRETER: Counsel, could you speak into the
17 mic? Thank you.

18 MS. ARSUAGA: Still can't hear me?

19 THE INTERPRETER: Better now.

20 MS. ARSUAGA: Your Honor, in the translations, in the
21 upper right corner, there were numbers.

22 THE INTERPRETER: Much better.

23 MS. ARSUAGA: So it would be -- at the top right it
24 should say 50.

25 THE COURT: Okay. So I have 50, and that is a -- but

1 this is in Spanish. Am I looking at the right --

2 MS. ARSUAGA: No, Your Honor. It should be the
3 translation. The document in Spanish, I believe, is 2186,
4 Bates stamp. Is that correct, Clayton?

5 MR. O'CONNOR: Excuse me.

6 MS. ARSUAGA: You submitted it as one of your
7 exhibits, 2186.

8 MR. O'CONNOR: It is one of the documents we
9 submitted, yes.

10 THE COURT: Okay. My Bates stamp starts at 2192.

11 MR. O'CONNOR: I think you -- I have to double-check.
12 I think you sent -- you got the medical records in different
13 iterations, and you may have sent a different numbered set.

14 MS. ARSUAGA: No, I sent -- Your Honor, this was done
15 in-person filing, and it was the same medical records that the
16 public defender had also submitted. I think the Government
17 could agree, Your Honor, that that document does state that on
18 that occasion, LG -- on March 9th, LG said that he went to get
19 checked for sexual assault because the other soldier had also
20 indicated. Perhaps that could take care of the issue.

21 MR. O'CONNOR: Can I have one second, Your Honor?

22 THE COURT: All right.

23 MS. ARSUAGA: Could we approach, Your Honor?

24 THE COURT: Yes.

25 Does it have a CM/ECF page number?

1 MS. ARSUAGA: I don't believe so. It was sealed
2 documents that I filed with --

3 THE COURT: Okay, but you say it should be at
4 page 49?

5 MS. ARSUAGA: 50, Your Honor.

6 MR. O'CONNOR: This is on my phone. I'm sorry.

7 THE COURT: 50. Hold on.

8 MS. ARSUAGA: I can pull it up on my computer.

9 MR. O'CONNOR: This is what she's referring to.

10 THE COURT: Okay. I'll look at this, but I want to
11 make sure I have it in the record.

12 MS. ARSUAGA: That's the number at the top right-hand
13 corner, so -- and I don't know when it was filed. Something
14 happened when I --

15 THE COURT: Okay. I've got it.

16 MS. ARSUAGA: Do you have it?

17 THE COURT: Yes.

18 MS. ARSUAGA: Thank you, Your Honor.

19 THE COURT: And what do you want to have included in
20 there?

21 MS. ARSUAGA: Your Honor, I would just like for that
22 to be added.

23 THE COURT: Any objection?

24 MR. O'CONNOR: No, Your Honor.

25 THE COURT: Okay. Do you know what we're talking

1 about?

2 THE PROBATION OFFICER: No.

3 THE COURT: Okay. Do you have the medical records?

4 THE PROBATION OFFICER: I do not.

5 THE COURT: Okay.

6 MS. ARSUAGA: I can provide them to probation, Your
7 Honor.

8 THE COURT: Okay. It's just that one paragraph under
9 current illness and above history.

10 MS. ARSUAGA: Yes, Your Honor.

11 THE COURT: Okay. All right. So we'll include that.

12 MS. ARSUAGA: May I continue?

13 THE COURT: Yes, please.

14 MS. ARSUAGA: Thank you.

15 As to paragraph 26, we are also not disputing what
16 appears in that paragraph. We would also just like added that
17 in the ninth sentence -- ninth line, I should say, from the
18 top down, in paragraph 26, where it says that, "EL also
19 indicated he felt pain in his anus." We would also like a
20 clarification that that was not until the second hospital
21 visit. It was on March 9th. It was not on March 6. So just
22 adding for clarification, Your Honor.

23 THE COURT: The date of March 9?

24 MS. ARSUAGA: Yes, Your Honor.

25 THE COURT: Okay. Any objection?

1 MR. O'CONNOR: No, Your Honor.

2 THE COURT: Okay. We'll note that.

3 MS. ARSUAGA: And then, Your Honor, the remaining, I
4 believe, are the paragraphs referring to the two enhancements:
5 the sexual exploitation and the aggravated role.

6 THE COURT: Which paragraphs are those?

7 MS. ARSUAGA: Yes, Your Honor.

8 That would be -- I'm going to take sexual
9 exploitation first. So it would be paragraphs 83; 87, because
10 of the adjusted offense level; 91, the total offense level --
11 I'm sorry.

12 THE COURT: Go ahead.

13 MS. ARSUAGA: 127, which is the guideline range; and
14 then 134, which is the guideline provisions for the fines.
15 Those are in general but also specific to sexual exploitation.

16 THE COURT: Okay. So let's do this. With the
17 exception of the deletion of the word "another" --

18 MS. ARSUAGA: Yes, Your Honor.

19 THE COURT: -- and the addition of the two
20 supplementary languages that you want included in there, you
21 are not otherwise disputing the factual recitations as set
22 forth beginning at page 6, paragraph 14, the offense conduct,
23 and continuing to page 18, paragraph 70.

24 MS. ARSUAGA: Yes, Your Honor, we are. Let me go
25 through them briefly.

1 THE COURT: You are or are not?

2 MS. ARSUAGA: We are objecting to some paragraphs,
3 yes. So starting page 14, you said?

4 THE COURT: Starting at paragraph 14, page 6.

5 MS. ARSUAGA: Oh, paragraph 14. I apologize.

6 Yes. In our first objections, we had objected to
7 paragraph 15. We understand that this is a conspiracy, but we
8 want to clarify and object to the fact that it states that
9 Mr. Silva, together with his codefendants, identified
10 potential targets and would incapacitate, intoxicate, or
11 otherwise render them defenseless. Our objection is that that
12 was never Mr. Silva Ochoa's participation in the offense, Your
13 Honor, as to that paragraph.

14 THE COURT: Well, let me ask the Government. Where
15 did this come from, this provision?

16 MR. O'CONNOR: In regards to?

17 THE COURT: Paragraph 15, the first sentence in that.

18 MR. O'CONNOR: I understand collectively this is a
19 summation of the facts, and I understand defense is disputing
20 the specific, more or less, overt acts that Mr. Silva Ochoa
21 took part in and saying that he himself did not identify
22 victims. The conspirators certainly identified victims, and I
23 believe one of his codefendants advised law enforcement that
24 he took part in identifying victims. It will take me a second
25 to locate that, but --

1 THE COURT: Okay. Go ahead.

2 MR. O'CONNOR: I stand corrected, Your Honor. I
3 don't think one of the codefendants specifically said he
4 identified the individual victims to pursue but was a member
5 of the conspiracy planning to go out and find victims.

6 THE COURT: Well, this sentence doesn't specifically
7 reference any particular victims. It just says targets.

8 MR. O'CONNOR: And we would contend that there is
9 evidence showing that he went out and conspired with his
10 coconspirators to, in general, find targets that would be the
11 object of the conspiracy.

12 THE COURT: Okay. And what is the source of that?

13 MR. O'CONNOR: Generally, I would point to a number
14 of the recorded phone calls where Mr. Silva Ochoa is talking
15 with codefendant Arango Castellanos about pursuing their
16 endeavor, going out to other clubs, finding work, as well as
17 the general statements from all three of them admitting to the
18 broader scope of the conspiracy, which included finding
19 victims to carry out the conspiracy.

20 THE COURT: Can you point me to those statements?

21 MR. O'CONNOR: Sure. I think even in Mr. Silva
22 Ochoa's own statement of facts he admitted that the
23 conspirators generally did this.

24 THE COURT: Well, that was one of the sources I was
25 going to ask you. Was there anything in the proffer?

1 MR. O'CONNOR: Yes, Your Honor. That's going to be
2 in Docket Entry 140. On the first page, page 1 of 6, the
3 first full paragraph outlines the broad scopes of the
4 conspiracy.

5 THE COURT: I don't have that in front of me, I don't
6 think.

7 MR. O'CONNOR: Your Honor, would you like my copy?

8 THE COURT: Yes.

9 MR. O'CONNOR: Your Honor, I think if you look at the
10 second and third paragraphs, it gives a sufficient factual
11 basis.

12 THE COURT: Okay. Do you see that in the factual
13 proffer?

14 MS. ARSUAGA: I do, Your Honor. I just would like
15 to, again, clarify for purposes of the sentencing, this is a
16 conspiracy limited to March 5 and 6 of 2020, and --

17 MR. O'CONNOR: I don't think it's limited to --

18 MS. ARSUAGA: The indictment states March 5th through
19 6th.

20 And during that time, the evidence shows and the
21 codefendants have admitted that his role was to drive the
22 other two to the bar where Mr. Jefferson Arango, I guess,
23 administered drugs to the victims, then he and codefendant
24 Uribe walked out of the bar and then put the victims in the
25 vehicle that my client was driving, and then my client, the

1 rest of the night, at least from the evidence that we have, he
2 is the driver that takes Mr. Arango Castellanos to the
3 different banks and establishments to use the cards from the
4 two victims.

5 So, again, we understand what in general the
6 conspiracy is. I'm trying to pinpoint that his role -- his
7 specific role here was very different from that of his
8 codefendants.

9 THE COURT: Well, I understand that, but the factual
10 proffer that he admitted to reflects as what is in the offense
11 conduct at paragraph 15. That as part of their conspiracy,
12 the conspirators and other coconspirators would visit high-end
13 entertainment neighborhoods in Bogota to identify potential
14 targets.

15 MS. ARSUAGA: Yes, Your Honor. We understand. We
16 just would maintain our objection to that.

17 THE COURT: Okay. I'll note the objection and deny
18 it.

19 The next objection.

20 MS. ARSUAGA: Yes.

21 We've gone through 24 and 26.

22 THE COURT: Right.

23 MS. ARSUAGA: Give me one second, Your Honor.

24 Paragraph 62 and paragraph 66 we're objecting for the same
25 reasons. This statement from codefendant Uribe Chiran is not

1 supported by any evidence. It's contrary to the statements of
2 the other two defendants, of my client and Mr. Jefferson
3 Arango.

4 There is no indication that those were the roles that
5 he played at any point where she states that he was involved
6 in giving the drugs or having liquor prepared in his vehicle
7 for extra drugs, that he would take turns withdrawing the
8 money, that --

9 THE COURT: Well, let's take them one at a time.
10 Paragraph 62 --

11 MS. ARSUAGA: 62, yes.

12 THE COURT: -- Uribe told law enforcement that Silva
13 introduced her to Arango to go work as part of their scheme,
14 which Silva explained would involve giving drugs to victims.

15 Do you object to that?

16 MS. ARSUAGA: We object to who introduced who.
17 Mr. Arango is the person who introduced Mr. Silva Ochoa and
18 Ms. Uribe Chiran. So we believe that that's -- her statement
19 is not correct.

20 THE COURT: Okay. Where do we get her statement
21 from?

22 MR. O'CONNOR: Thank you, Your Honor.

23 She did a debrief or made a statement to the FBI
24 while in Bogota, Colombia. I don't have the excerpt in front
25 of me. We cited to it in our objections. We provided copies

1 of the transcript of her statement to probation, and those
2 comments come from her statements to law enforcement.

3 THE COURT: Okay.

4 MS. ARSUAGA: And, Your Honor, I would note that in
5 the first interview that she had with them, she first states
6 that she was so out of it that day because of the drugs that
7 she had consumed that she really did not remember much. And
8 the interview then ends.

9 And then there's a subsequent interview, I believe,
10 the next month where she does provide this information. And
11 what I'm saying is that that information goes completely
12 against what Mr. Jefferson Arango admitted to and what he said
13 that Mr. Silva Ochoa had done. At no point other than driving
14 the car -- that's the only thing they have in common as to
15 what my client did.

16 At no point was there any indication from that first
17 defendant that pled, Mr. Jefferson Arango, that Mr. Silva
18 Ochoa assisted him with drugging victims, that he assisted him
19 with putting anything in drinks in his vehicle, that he was
20 the one in charge of releasing the victims. We know from the
21 evidence in this case he was in the vehicle driving, but the
22 one who was also with him and stepped out and put the victims
23 in the street was Mr. Jefferson Arango. My client does not
24 participate in that.

25 When she gives her statement, she also says -- and we

1 know that's incorrect -- she states to the FBI in Bogota that
2 when she and Mr. Jefferson Arango in the morning of March 6
3 are in the shopping center, that at that same time my client
4 was releasing the victims. And we know from the evidence that
5 is not correct. They had already been released and they had
6 been released with Mr. Jefferson Arango.

7 So there are many inconsistencies as to her
8 statement, and we would ask the Court not to rely on this or
9 paragraph 66 for the same reasons, Your Honor.

10 THE COURT: Well, you're not disputing that that's
11 what she said.

12 MS. ARSUAGA: No, I'm not disputing that's what she
13 said. I'm asking the Court -- that we're objecting for it
14 being inconsistent with everything else and for the Court not
15 to take that into consideration.

16 THE COURT: Okay. Well, does this in any way affect
17 the guideline calculation, these two paragraphs that you're
18 objecting to?

19 MS. ARSUAGA: Well, it could, Your Honor, because
20 she's attributing to him a higher role, and one of the factors
21 is that probation, in the addendum, recommended an aggravating
22 role, a two-level enhancement. So those statements that she's
23 giving are used by the Government in their sentencing memo as
24 examples as to why he had a higher role.

25 THE COURT: All right. What's the Government's

1 response?

2 MR. O'CONNOR: Your Honor, we understand that defense
3 wants to dispute the statement or the content of the
4 statement, but his codefendant did make that statement, and
5 she alleged that Mr. Silva Ochoa did take on those roles.
6 Some of that is corroborated by another codefendant,
7 Mr. Arango, as far as it relates to the role enhancement.
8 Particularly, both of them allege that he had contacts --

9 THE COURT: That he?

10 MR. O'CONNOR: Contacts.

11 THE COURT: He being whom?

12 MR. O'CONNOR: Mr. Silva Ochoa had the contacts for
13 where to use the cards -- when they were using the cards at
14 different stores to rack up the charges, that those were his
15 contacts. So there is some corroboration to some of the
16 points that she's making.

17 To that end -- you know, she provides a basis for
18 what we think is the appropriate role enhancement, but it's
19 not the only basis.

20 THE COURT: To the probation officer, do you have the
21 statement -- the Silva statement?

22 THE PROBATION OFFICER: Your Honor, I can check my
23 email just like the AUSA, but I don't have the documents on
24 me.

25 MS. ARSUAGA: Which statement, Your Honor?

1 THE COURT: The Silva statement.

2 MS. ARSUAGA: Mr. Silva Ochoa's statement?

3 THE COURT: Excuse me. The --

4 MS. ARSUAGA: Ms. Uribe Chiran?

5 THE COURT: Yes.

6 MS. ARSUAGA: I believe I have the Spanish...

7 THE COURT: This is the Uribe statement? Is that the
8 one?

9 MS. ARSUAGA: No.

10 MR. O'CONNOR: Your Honor, I can look up what we
11 provided to probation.

12 THE COURT: Okay.

13 MS. ARSUAGA: Your Honor, this is my copy. It's
14 marked up a little bit but...

15 MR. O'CONNOR: And we were referring to pages 3865 --

16 MS. ARSUAGA: At the bottom 3865.

17 MR. O'CONNOR: -- through 69, I think.

18 THE COURT: 3865 you said?

19 MR. O'CONNOR: Correct. Through 38 -- 71.

20 Your Honor, if it helps, we have a summary of what's
21 in there in our objections, and it's -- the full paragraph
22 outlines -- the first three sentences are what we believe are
23 what Arango Castellanos says regarding the defendant, and then
24 the second is from Ms. Uribe Chiran --

25 THE INTERPRETER: Counsel, I cannot hear you at all.

1 MR. O'CONNOR: I'm so sorry.

2 THE COURT: Can you email those to chambers?

3 MR. O'CONNOR: Sure. What would you like us to
4 email?

5 THE COURT: The statement -- the translation. Is
6 this in the record? I just want to make sure this is in the
7 record.

8 MS. ARSUAGA: I don't have it. Did you put it in the
9 record?

10 MR. O'CONNOR: We submitted it as part of our
11 objections.

12 THE INTERPRETER: Sorry, Counsel.

13 MR. O'CONNOR: We submitted it -- we submitted it as
14 part of our objections to probation. We did not provide it as
15 a separate basis to our sentencing memo.

16 THE COURT: Okay.

17 MR. O'CONNOR: But we're certainly happy to send --

18 THE COURT: Is it in the docket?

19 MR. O'CONNOR: I don't believe it's in the docket.

20 THE COURT: So let's get it on the docket.

21 MR. O'CONNOR: Can I email what we provided to
22 probation to the Court?

23 THE COURT: You can do that, but I would also like
24 you to separately have this document -- if it's going to be
25 relied upon, then it should be in the record. Okay? So you

1 can offer it into admission.

2 MR. O'CONNOR: Will do.

3 THE COURT: I just need to have the record to reflect
4 that.

5 MR. O'CONNOR: Will do, Your Honor.

6 THE COURT: Okay.

7 MR. O'CONNOR: Your Honor, may I get an email address
8 that I can send this quickly?

9 THE COURT: Can you give him...

10 Okay. So as I understand, Counsel, your argument is
11 not that she didn't say what was in this paragraph but that
12 it's inconsistent with what others may have said?

13 MS. ARSUAGA: Yes, Your Honor. Paragraphs 62 and 66
14 for the same reasons. We're not disputing that she said it.

15 THE COURT: All right. So I'll note the objection
16 and deny it, and I've looked at that, as well as her own
17 statement, and also the references to the objections to the
18 presentence investigation report and the -- that includes not
19 only your objections but the Government's objections as well,
20 referencing her statements. Okay? So we'll note the
21 objection and deny it.

22 Next. This is opposing counsel's submission, and
23 that's your objections back. But make sure that that's put on
24 the record for appellate review purposes.

25 MR. O'CONNOR: Your Honor, I did just email that

1 excerpt that you're reviewing.

2 THE COURT: Yes, and I'm happy to look at it, but
3 it's your responsibility to make sure that they become part of
4 the CM/ECF --

5 MR. O'CONNOR: Will do, Your Honor. Thank you.

6 THE COURT: All right. The next objection.

7 MS. ARSUAGA: Yes, Your Honor.

8 Continuing. And again, we're not disputing that
9 Ms. Uribe stated this, but on paragraph 68, we would object to
10 the first line that Silva Ochoa went into the hotel with the
11 victims. There's no evidence other than Mr. Silva Ochoa
12 remained in his vehicle the entire night, starting from the
13 moment he dropped off the codefendants at the bar to the
14 moment at 2:40 AM where the victims were brought into the car.

15 Mr. Silva Ochoa never exits, does not go into the
16 bar, does not have anything to with the drugging of the
17 victims, bringing them in the car. He transports. That's
18 what he did.

19 Later on, in the morning, when there's videos of
20 Mr. Arango Castellanos at different establishments, mainly
21 banks, trying to make withdrawals and use the credit and debit
22 cards, Mr. Silva Ochoa is not in video. They only know that
23 he's around because of the cell towers. They know his car is
24 in the area. Mr. Silva Ochoa has accepted that, that he was
25 there with him. But the entire night, from beginning to end,

1 it shows him in the vehicle.

2 There's no evidence of who went or did not go into
3 the hotel, and I would again state that basing it for the
4 Court to not give that too much consideration. It's based on
5 the statement of her and him also. Mr. Arango Castellanos and
6 Ms. Uribe Chiran differ as to when my client allegedly went
7 into the hotel. Ms. Uribe Chiran says he came in from the
8 beginning. All three went in. Mr. Arango Castellanos says he
9 came in later, briefly.

10 And there's no evidence of that. There's no video of
11 that at all, but I would say to Your Honor that it's based on
12 the statements of two people who were consuming drugs during
13 that night, and they've admitted it. The only one who
14 obviously was not was the driver, who had to be in a condition
15 enough to be able to drive them around. So that would be my
16 objection -- not that she did not say it but for the Court not
17 to take it into consideration.

18 THE COURT: Okay. This paragraph 68 reads as
19 follows: "Then Arango, Uribe, and Silva went into the hotel
20 room and -- went into the hotel with the victims. Uribe
21 advised they were all together at the hotel for approximately
22 30 minutes. Arango then instructed Uribe to remain in the
23 hotel room with the unconscious victims while he and Silva
24 attempted to use the victims' bank cards to withdraw money.

25 "Uribe stayed along with the victims for

1 approximately sixty minutes. Arango and Silva then returned
2 to the hotel room and told Uribe that they were unable to
3 withdraw money from the victims' bank -- the victims' accounts
4 and would try again in the morning. Arango told Uribe to go
5 back to her house, and she left him and Silva in the hotel
6 room with the victims.

7 "It was still dark outside when Uribe left the hotel,
8 and she walked about seven or eight blocks to her residence.
9 Uribe never saw the victims again. The following morning,
10 Uribe met Arango and Silva. They went to a car wash, and then
11 she and Arango went to the Colima Shopping Center nearby."
12 Nothing else with respect to Silva.

13 So what is the evidence with respect to --

14 MR. O'CONNOR: Similarly, it's from a statement that
15 Ms. Uribe Chiran made to law enforcement.

16 THE COURT: Okay.

17 MR. O'CONNOR: We can provide that statement.

18 THE COURT: Okay. I understand your argument. I'm
19 going to note the objection and overrule it. I don't think it
20 will change the guideline calculation on this point or where
21 within the guidelines the Court would otherwise sentence. I
22 understand the circumstances under which she made the
23 statement, what her condition was, and we'll give it as much
24 weight or as little weight as I think it deserves based on
25 your representations as to the circumstances under which she

1 made the statements.

2 Fair enough?

3 MS. ARSUAGA: Yes, Your Honor. We would just note,
4 Your Honor, that I do believe that could make a difference,
5 unless the Court would not take it into consideration, because
6 she is placing Mr. Silva Ochoa inside the hotel room with the
7 victims when probation has made a determination of sexual
8 exploitation and has added that enhancement.

9 So we obviously objected to it for all the reasons in
10 our filings, but we're also saying that there was no
11 opportunity for him to have participated in that.

12 THE COURT: Well, first of all, absent him testifying
13 under oath to that fact, there is no contrary evidence other
14 than the statements made by her. So if he wants to take the
15 stand and testify under oath, that's fine. I'll be happy to
16 consider it.

17 And I understand that the probation office has made
18 an enhancement, and ultimately, it's the Court's
19 responsibility based on all the facts that are set forth in
20 the offense conduct to make a determination. Personally, I
21 don't think that whether he was in the hotel room or not would
22 make a difference in the determination of whether the
23 enhancement is appropriate.

24 I think there's certainly sufficient other evidence
25 to draw whatever conclusion we're going to make regarding

1 that, but this -- whatever ambiguity about whether he was in
2 the hotel room, actually, or whether he was the driver --
3 only -- only the driver of the vehicle, I don't think it would
4 make a difference in the determination of the enhancement.

5 MS. ARSUAGA: Yes, Your Honor.

6 THE COURT: Okay. But I take it you don't want to
7 put on any evidence to the contrary.

8 MS. ARSUAGA: No, Your Honor.

9 THE COURT: All right. The next objection.

10 MS. ARSUAGA: We would object to paragraph 71 because
11 of the role assessment where it says that "As to Mr. Silva, he
12 showed himself to be a leader, supervisor, organizer, through
13 his decision-making authority, the nature of his participation
14 and the commission of the offense, the recruitment of
15 accomplices, the degree of participation and planning or
16 organizing the offenses, and the degree of control and
17 authority exercised over others."

18 And that's where they determine a two level, and we
19 would just rely on our filing, Your Honor, as to that point,
20 and we would renew our objection.

21 THE COURT: Okay. Let me back up a little bit before
22 we get to the role enhancement because that does go to a
23 guideline calculation. But in terms of the offense conduct,
24 other than the additions that you made -- the two additions
25 that we've included -- so we've granted those two -- the

1 deletion of the word "another," which we granted that as well,
2 and the statements attributed to -- what's her name?

3 MS. ARSUAGA: Ms. Uribe Chiran.

4 THE COURT: -- Uribe, there are no other factual
5 objections?

6 MS. ARSUAGA: No, Your Honor.

7 THE COURT: Okay. All right. So on that basis, if
8 there are no other fact objections, then we're just arguing
9 now over the legal conclusions that can be drawn from those
10 otherwise undisputed facts; correct?

11 MS. ARSUAGA: Yes, Your Honor.

12 THE COURT: On any of the factual objections, did you
13 have anything further as far as the facts set forth in the
14 offense conduct?

15 MR. O'CONNOR: No, Your Honor. Contextually, we had
16 filed objections to the initial PSR. Probation incorporated
17 our objections into the final, and we don't have any
18 objections based on the final.

19 THE COURT: So your next objection is to role
20 assessment?

21 MS. ARSUAGA: Yes, Your Honor.

22 THE COURT: Okay. Did you want to have any further
23 argument on that?

24 MS. ARSUAGA: No, Your Honor. I believe that what's
25 in the filing is enough --

1 THE COURT: Okay.

2 MS. ARSUAGA: -- so we would renew our objection
3 based on what was stated in Docket 162 that we filed with the
4 Court.

5 THE COURT: Okay. So we're talking about Part B role
6 in the offense, Section 3B1.1 aggravating role. And based on
7 the defendant's role in the offense, increase the offense
8 level as follows, and the guideline provides for a four-level
9 increase, a three-level increase -- go ahead -- and a
10 two-level increase. Am I right?

11 MR. O'CONNOR: I apologize, Your Honor, I jumped the
12 gun. You're absolutely correct.

13 THE COURT: So they lay out three different options
14 for a role in the offense, the four-level being the highest,
15 the two-level being the lowest.

16 And the two-level, 3B1.1(c), if the defendant was an
17 organizer, leader, manager, or supervisor in any criminal
18 activity other than described in Subsection A or B, increase
19 by two levels.

20 And the probation office gave the lowest level, a
21 two-point -- and let's see here.

22 MS. ARSUAGA: Your Honor, just to be clear, the other
23 two would not apply, because of the number of participants.
24 So it would only be 3B1.1(c), if anything.

25 THE COURT: Right.

1 Okay. Now, I know initially the probation office
2 responded to the Government's objection, but when the defense
3 objected, did the probation office respond to the defense
4 objection?

5 THE PROBATION OFFICER: Yes, Your Honor. But in
6 regards to the role, that's -- my response is under the second
7 page, Your Honor.

8 THE COURT: Of the addendum?

9 THE PROBATION OFFICER: Of the addendum, correct.

10 THE COURT: And is that in response to the
11 Government's objection?

12 THE PROBATION OFFICER: Correct, to the role.
13 Because they provided additional information, after the draft
14 report, regarding the intercepted calls between Silva Ochoa
15 playing a role in recruiting.

16 THE COURT: Okay. So I want to make sure that we're
17 literally on the same page. You're referring to at least two
18 intercepted calls.

19 THE PROBATION OFFICER: (Nods head.)

20 THE COURT: So the probation response is "At least
21 two intercepted calls show Silva Ochoa playing a role in
22 recruiting accomplices to the criminal scheme, and as such,
23 his participation in planning or organizing the offense.
24 Specifically, on May 28, 2020, in a discussion with Arango
25 Castellanos about where to find more work, Silva Ochoa

1 explained that, quote, 'Kenny,' close quote, (Uribe Chiran)
2 was ready to work and has contacted two other girls who want
3 to work.

4 "The defendant also discussed new potential recruits
5 with Arango Castellanos. For instance, on July 30, 2020,
6 Silva Ochoa informed Arango Castellanos about a woman who
7 wanted to work, and the defendant asked how old she is and
8 talked about people who can make fake identification cards.

9 "Additionally, in statements to law enforcement, both
10 of Silva Ochoa's codefendants, who refer to him as 'Tata,'
11 discuss his leadership and managerial role in carrying out
12 their crimes. For example, Arango Castellanos advised law
13 enforcement that Silva Ochoa had the context for where to use
14 the victims' cards to get money, control and access to these.
15 Context further shows his recruitment of accomplices,
16 organizing of the offense, as well as authority over others
17 regarding where to use the victims' cards for illegal profit.

18 "Further highlighting his recruitment role, Uribe
19 Chiran told law enforcement that Silva Ochoa introduced her to
20 Arango Castellanos to go work as part of their scheme, which
21 he explained would involve giving drugs to victims. She
22 further explained Silva Ochoa was in charge of driving the
23 car, that Silva Ochoa and Arango Castellanos would take turns
24 withdrawing money using the victims' stolen cards, had
25 contacts, and decided where to go to make the withdrawals, as

1 well as that Silva Ochoa was in charge of releasing the
2 victims.

3 "These statements show that Silva Ochoa participated
4 in nearly every aspect of the planning and preparation of the
5 offense."

6 So based on that, I'll note the defense objection and
7 find that the probation office correctly assigned the
8 two-level enhancement.

9 The next objection.

10 MS. ARSUAGA: Your Honor, the next objection would
11 be -- can I have a second?

12 THE COURT: Sure.

13 MS. ARSUAGA: Paragraph 83, which is the sexual
14 exploitation enhancement under 2A4.1(b)(5). And we, again,
15 would rely on our filings in both our original objections and
16 our objections to the addendum to the PSR.

17 THE COURT: Okay. Nothing further on that?

18 MS. ARSUAGA: Not on our part, Your Honor. We would
19 just ask the Court to base our objections on what we filed
20 already.

21 THE COURT: Okay. Thank you.

22 Let me just go to that. So 2A4.1 refers to
23 "kidnapping, abduction, unlawful restraint, provides for a
24 base offense level of 32 and specific offense characteristics.
25 If the victim was sexually exploited, increase by six levels."

1 And that's what the probation office did. And their
2 response to your objection --

3 MS. ARSUAGA: Your Honor, if I may, quickly. Just
4 briefly, one comment about their response.

5 THE COURT: Okay.

6 MS. ARSUAGA: On page 3 of the addendum to the PSR
7 where it says, "Probation office's response."

8 THE COURT: Right.

9 MS. ARSUAGA: Aside from our objection to the
10 enhancement, we just want to make clear, in line 4, where it
11 says, "In multiple paragraphs of the summary of judicial
12 assistant package, there is information confirming the victims
13 were sexually assaulted." That is incorrect. There was never
14 any confirmation of sexual assault. That was addressed under
15 Mr. Jefferson Arango's sentence, and it was confirmed that
16 there was no medical confirmation of that.

17 THE COURT: You mean other than relying on the
18 victims' own statements?

19 MS. ARSUAGA: Yes, Your Honor.

20 THE COURT: Did this come up at the prior sentencing?

21 MS. ARSUAGA: It did, Your Honor, yes.

22 THE COURT: And what was the determination?

23 MR. O'CONNOR: That the enhancement applied.

24 THE COURT: That the enhancement applied. But this
25 statement saying that there was information confirming --

1 MR. O'CONNOR: It got very in the weeds as to how you
2 read the law enforcement reporting. And ultimately, that
3 language was struck.

4 THE COURT: Okay. So at least we can be consistent.
5 Okay? All right. So we'll do the same thing here. But I
6 don't -- and I will do that, but -- not relying on the fact
7 that it was confirmed. But other than that, there being no
8 objection to the factual recitations that we outlined before
9 and noting that it was only the conclusion to be drawn from
10 that, I'm satisfied that there's more than sufficient evidence
11 or by a preponderance of the evidence that the victims were
12 sexually exploited within the meaning of the guideline
13 provision, and I'll note the objection and deny it.

14 Okay. The next objection.

15 MS. ARSUAGA: That would be all, Your Honor. We
16 would renew our objections to both enhancements and the
17 subsequent guideline calculations.

18 THE COURT: Okay. So based on that, the probation
19 office has calculated a total offense level of 39 with a
20 criminal history category of one and a guideline range of 262
21 to 327 months.

22 Based on the Court's ruling, is that a correct
23 calculation of the guidelines?

24 MR. O'CONNOR: Yes, Your Honor.

25 MS. ARSUAGA: Yes, Your Honor.

1 THE COURT: All right. Mr. Silva Ochoa, do you want
2 to say anything on your own behalf before sentence is imposed?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Go ahead.

5 THE INTERPRETER: Your Honor, I'm sorry. We...

6 THE DEFENDANT: Your Honor, I would, first of all,
7 like to apologize and say how sorry I am, really, for my bad
8 acts. I would like to say that ever since I first came to the
9 United States, I have always wanted to cooperate with the
10 Justice Department or in order to find justice, and I'd like
11 to say here, before all of you, that I am hoping that those
12 involved in this case but especially the victims and their
13 families can find a way to forgive me. Thank you.

14 THE COURT: Thank you.

15 Anything on his behalf?

16 MS. ARSUAGA: Yes, Your Honor, briefly.

17 Your Honor, again, we would ask -- under our
18 calculations, the guidelines should be 108 to 135. We
19 understand that the Court has overruled our objections.

20 Then we would ask the Court to, in accordance with
21 the plea agreement, sentence him to the lower end, which is
22 the agreement with the Government, which is 262 months. And
23 we note several factors. The first one is, Your Honor, he
24 entered into a plea and cooperation agreement, and he was
25 instrumental in Ms. Uribe having pled guilty earlier today.

1 And he cooperated, you know, pretty early on. I
2 believe he had given a statement to authorities in Colombia
3 initially. Aside from that, Your Honor, there's the fact that
4 he has -- once he's done with his time in the US, he will be
5 deported to Colombia, and he has to face charges over there
6 for similar circumstances.

7 His codefendants were already sentenced to, I
8 believe, 34 years -- I know Ms. Uribe Chiran -- I believe it
9 was 34 years -- and I believe Mr. Arango Castellanos also. So
10 he's facing a long sentence --

11 THE COURT: Well, they were sentenced in Colombia?

12 MS. ARSUAGA: They were sentenced in Colombia, yes --
13 obviously not for the same victims but similar circumstances,
14 Your Honor. So we would ask the Court to take that into
15 consideration.

16 And we'd like to make a distinction between
17 Mr. Arango Castellanos, who the Court sentenced last year, and
18 as the Court knows, he had pled in a straight plea to all six
19 counts. So that resulted in more exposure, I believe, than
20 just the one count that my client pled to. But aside from
21 that, there is the level of participation of Mr. Arango
22 Castellanos compared to my client.

23 It is undisputed that in this case, March 5 through 6
24 of 2020, Mr. Silva Ochoa was the driver in this case.
25 Mr. Arango Castellanos is the person who pulled the strings,

1 the person who told Mr. Silva Ochoa to pick him up and
2 Ms. Uribe Chiran to drive them to the bar. He's the one who
3 drugged the victims. He's the one who later is able to dupe
4 one of them to obtain his PIN number. He's the one who's in
5 all the videos withdrawing money and using their cards.

6 Mr. Silva Ochoa does not participate in any way
7 whatsoever in the same manner. This is why there was a
8 determination -- and I think it's clear from my objections --
9 that Mr. Arango Castellanos was definitely the leader here,
10 and he is the reason why everything occurred. So I would ask
11 the Court to take that into consideration.

12 And the final point, Your Honor, would be that my
13 client was arrested August 11, 2023, in Chile, where he was
14 extradited from. So we would ask that the time be credited
15 all the way from that arrest.

16 THE COURT: All right. Anything from the Government?

17 MR. O'CONNOR: Your Honor, we submitted a sentencing
18 memorandum that states out the position of the Government in
19 regards to sentencing. I don't need to take your time to
20 reiterate it only to say that the facts, they speak for
21 themselves. This is a bad and depraved crime. Well, credit
22 to the defendant to now apologizing to the victims. It
23 created harm. And the way they went about committing their
24 crimes has the potential of even worse harm occurring, and it
25 was performed in a depraved way that neglected any concern for

1 the harm suffered by the victims.

2 We do note that the defendant cooperated early with
3 the Government on this. We did agree to recommend a sentence
4 at the low end of the guidelines. In the event that the two
5 sentencing enhancements that you've applied did apply -- and
6 while not addressing the objections, we're also asking for the
7 serious bodily injury guideline to apply. I know you
8 accounted for that in the guideline calculation. All to say
9 is, Your Honor, we do believe that a sentence to 262 months
10 confinement, three years of supervised release, restitution in
11 the amount of \$24,115, and a special assessment does
12 appropriately account for the defendant's crimes, his actions
13 afterwards. We think it's sufficient but not greater than
14 necessary to accomplish the 3553 factors.

15 THE COURT: Anything else?

16 MR. O'CONNOR: Thank you, Your Honor.

17 MS. ARSUAGA: Nothing further, Your Honor.

18 THE COURT: A couple of points. First of all, I
19 understand the effort to distinguish the role of the
20 defendants in this case, but I note that the plea is to the
21 conspiracy. And both under legal conspiracy law, as well as
22 the guidelines, a defendant is to be held accountable for all
23 reasonably foreseeable acts of his coconspirators.

24 So this is akin to having someone rob a bank and
25 having somebody be the driver of the getaway car. They're

1 both involved in the same offense conduct. And while they may
2 have played different roles, they were instrumental in the
3 overall success of the conspiracy.

4 But to the extent that there are differences in their
5 conduct, that is certainly reflected already in the guideline
6 calculations, by my recollection. I believe Mr. Castellanos
7 was sentenced to, what, 48 years in prison.

8 MR. O'CONNOR: Yes, Your Honor.

9 MS. ARSUAGA: Yes, Your Honor.

10 THE COURT: So the guidelines for this defendant are
11 significantly below that.

12 Second, let me make sure, having heard now from the
13 defendant and taken into consideration his own statements and
14 those on his behalf by his counsel, given the objections to
15 the presentence investigation report that I've noted the
16 objections, I've ruled on them, but for appellate review
17 purposes, I think the record should reflect that the sentence
18 imposed today would be the same post-Booker as a reasonable
19 sentence in the event that there is appellate review and those
20 determinations that I've made with respect to the guideline
21 calculations are determined to be incorrect.

22 So that's a long way of saying the sentence I impose
23 today would be the same. For appellate review purposes, in
24 the event that the appellate court finds that I was in error
25 in any of those guideline calculations, they would have the

1 benefit of knowing what this Court's sentence would be in any
2 event.

3 The Court has considered the statements of all
4 parties, the presentence report, which contains the advisory
5 guidelines and the statutory factors as set forth in Title 18,
6 United States Code, Section 3553(a).

7 The sentence will be imposed within the guideline
8 range, as this will provide sufficient punishment and
9 deterrence. It is the finding of the Court the defendant is
10 not able to pay a fine; however, restitution is mandatory.

11 In that regard, is there any agreement or
12 disagreement as to restitution, or do we need to schedule a
13 restitution hearing?

14 MR. O'CONNOR: I don't believe there's disagreement,
15 Your Honor.

16 MS. ARSUAGA: There's no disagreement, Your Honor.

17 THE COURT: Okay. And do we have a restitution
18 amount or is there restitution?

19 MR. O'CONNOR: \$24,115.

20 THE COURT: Pardon me?

21 MR. O'CONNOR: \$24,115.

22 THE COURT: 24,115, okay.

23 It is the judgment of the Court the Defendant, Pedro
24 Jose Silva Ochoa, is committed to the Bureau of Prisons to be
25 imprisoned for 327 months as to Count 1 of the indictment. It

1 is further ordered the defendant shall pay restitution in the
2 amount of \$24,115. Upon release from imprisonment, the
3 defendant shall be placed on supervised release for a term of
4 three years as to Count 1 of the indictment. Within 72 hours
5 of release, the defendant shall report in person to the
6 probation office in the district where released. While on
7 supervised release, the defendant shall comply with the
8 mandatory and standard conditions of supervision as referenced
9 in Part F of the presentence report.

10 The defendant shall also comply with the following
11 special conditions: surrendering to immigration for removal
12 after imprisonment; financial disclosure requirement; no new
13 debt restriction; permissible search; association restriction;
14 and unpaid restitution, fines, or special assessments. It is
15 further ordered the defendant shall pay immediately to the
16 United States a special assessment of \$100 as to Count 1 of
17 the indictment.

18 So that, by my calculation -- Mr. Castellanos was
19 sentenced to 48 years imprisonment, and this sentence reflects
20 a sentence of approximately 27 years and several months. So
21 not quite -- a little more than half of what Mr. Castellanos
22 received.

23 Now that sentence has been imposed, does the
24 defendant or his counsel object to the Court's finding of fact
25 or to the manner in which sentence was pronounced?

1 MS. ARSUAGA: No, Your Honor. We would just ask that
2 the judgment include the fact that he was arrested on
3 August 11, 2023, for purposes of BOP or that the Court do the
4 reduction -- I don't know if the Court wants to do it, but...

5 THE COURT: Okay. So is the Government in agreement
6 that he was in custody on this charge as to what date?

7 MR. O'CONNOR: In Chile. I haven't done the research
8 to see if there's a clear rule on whether his being held by
9 foreign law enforcement for extradition proceedings
10 warrants --

11 MS. ARSUAGA: Well, he was held because of this, Your
12 Honor, because -- he was held because of an extradition
13 request, so...

14 THE COURT: On August 11?

15 MS. ARSUAGA: Yes.

16 MR. O'CONNOR: The date's correct.

17 THE COURT: Okay. So we'll have the judgment run or
18 that he be given credit for the time he's been incarcerated
19 dating back to August 11, 2023.

20 MS. ARSUAGA: Thank you, Your Honor.

21 THE COURT: Okay. Mr. Ochoa, do you understand you
22 have a right to appeal the sentence that I've imposed?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Anything further?

25 MS. ARSUAGA: Nothing further, Your Honor.

1 THE COURT: Thank you.

2 MR. O'CONNOR: Thank you, Your Honor.

3 (Proceedings concluded at 3:12 PM.)

4

CERTIFICATE OF REPORTER

5

6 I certify that the foregoing is a correct
7 transcription of the record of proceedings in the
8 above-entitled matter prepared from my stenotype notes.

8

9 DATE: 9th of July, 2025

/s/Lance W. Steinbeisser

10

FCRR, RPR, FPR-C

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Official Court Reporter

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United States District Court

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Southern District of Florida

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Miami, Florida

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In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10901

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO JOSE SILVA OCHOA,

a.k.a. Tata,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cr-20173-KMM-3

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: February 23, 2026

For the Court: DAVID J. SMITH, Clerk of Court