Appendix A

benefits in November was arbitrary and capricious and similarly directing the government to make full payments of SNAP benefits by November 7, including by using the Section 32 fund.

The government filed a notice of appeal and has moved to stay pending appeal the district court's November 6 orders. The government requests a stay on the merits and an administrative stay. We note that in its stay briefing to us, the government has not disputed that it may under 7 U.S.C. § 2257 use the Section 32 fund to cover the provision of SNAP benefits for the month of November. Because the November 6 orders provide the same relief, the government would need to establish that it is entitled to a stay of both orders in order to receive the relief that it requests from being required to make full SNAP payments by utilizing available Section 32 funds in combination with the contingency funds.

The request for an administrative stay is denied. The government's motion for a stay pending appeal remains pending, and we intend to issue a decision on that motion as quickly as possible.

UNITED STATES of America, Appellee,

v.

Carlos MALDONADO-VARGAS, a/k/a Carlos Maldonado, Defendant, Appellant.

No. 22-1735

United States Court of Appeals, First Circuit.

November 14, 2025

Background: Defendant was convicted in the United States District Court for the District of Puerto Rico, John A. Woodcock and Gustavo A. Gelpí, JJ., of one count of securities fraud and 15 counts of bank fraud, relating to defendant's company entering into financial agreement that amounted to an alleged Ponzi scheme. Defendant was sentenced to 135 months' imprisonment, was ordered to pay restitution under the Mandatory Victim Restitution Act of 1996 (MVRA) in the amount of just over $2.1 million for his bank fraud convictions, and was ordered to pay restitutions on his securities fraud conviction as a condition of his supervised release. Defendant appealed his conviction, sentence, and restitution order. Government filed a letter under rule governing citation of supplemental authorities indicating it no longer was pursuing defendant's bank fraud convictions and agreed that the Court of Appeals should vacate those convictions.

Holdings: The Court of Appeals, Rikelman, Circuit Judge, held that:

(1) any error was harmless in the district court admitting into evidence forensic accountant's categorization of transactions in defendant's bank records contained in summary of bank records;

(2) evidence was sufficient to support finding that money from clients was pooled in common, as would support determination productive development contracts constituted investment contracts in order to support securities fraud conviction under Ponzi scheme theory;

(3) evidence was sufficient to support finding that defendant put clients' money toward a single business and common enterprise, as would support determination contracts constituted investment contracts in order to support securities fraud conviction under Ponzi scheme theory;

(4) district court's methodology in its loss calculation supported the loss amount it reached of $3.5 million as a result of defendant's securities fraud;

(5) defendant failed to demonstrate that the district court clearly or obviously erred in determining that the victims identified in the presentence investigative report (PSR) were persons directly harmed by defendant's scheme charged in the indictment, in district court ordering defendant pay restitution as part of his supervised release; and

(6) defendant failed to demonstrate that the district court clearly or obviously erred in concluding that the individuals listed in the PSR were, by a preponderance of the evidence, victims of defendant's securities fraud crime, in district court ordering defendant pay restitution as part of his supervised release.

Affirmed.

1. Criminal Law ⚷1130(5)

Defendant waived for appellate review his spillover argument, in which he alleged that vacating the bank fraud charges in accordance with Government's request in its letter to Court of Appeals under rule governing citation of supplemental authorities created prejudicial spillover into his securities fraud convictions; defendant failed to make the arguments in his opening appellate brief, and the spillover argument was available to defendant at the time he submitted his opening appellate brief, and the Court of Appeals did not accept belated arguments as a matter of course. Fed. R. App. P. 28(j).

2. Criminal Law ⚷1153.1

Court of Appeals reviews evidentiary rulings for abuse of discretion.

3. Criminal Law ⚷1139

In reviewing evidentiary rulings for abuse of discretion, the Court of Appeals evaluates questions of law de novo.

4. Criminal Law ⚷1168(1)

If the Court of Appeals holds that an abuse of discretion occurred in reviewing evidentiary rulings, it asks whether the court's error was nonetheless harmless.

5. Criminal Law ⚷1036.4, 1130(5)

Defendant did not waive for appellate review claim that the district court abused its discretion by improperly admitting into evidence certain exhibits and accompanying testimony regarding his bank records prepared by forensic accountant under rule governing the use of a summary to prove the content of voluminous writings, alleging several of the exhibits were impermissibly based on hearsay and embellished with inferences and conclusions, in prosecution for securities fraud and bank fraud; defendant objected to several exhibits expressly during trial, including specific portions of the exhibits, and referenced the objections again in his opening appellate brief. Fed. R. Evid. 1006.

6. Criminal Law ⚷400(1)

For a summary to be admissible, it must meet several criteria: for one, the underlying source material must be admissible, and the proponent must show that the voluminous source materials are what the proponent claims them to be and that the summary accurately summarizes the source materials. Fed. R. Evid. 1006.

7. Criminal Law ⚷1169.10

Any error was harmless in the district court admitting into evidence forensic accountant's categorization of transactions in defendant's bank records contained in summary of defendant's bank records under rule governing the use of a summary to prove the content of voluminous writings, despite defendant's claim several exhibits were impermissibly based on hearsay and embellished with inferences and conclusions, in prosecution for securities fraud and bank fraud; defendant did not challenge the admissibility of the underlying bank records or the majority of the summary of bank records, rather he only objected to the categorization of the transactions, the Government charged defendant with operating a Ponzi scheme and what mattered to the case was showing that returns to earlier investors were paid from contributions by later investors, rather than from legitimate business profits, and Government relied on the admissible evidence in summary exhibit to demonstrate defendant overwhelmingly recycled funds from initial investors to pay off subsequent investors. Fed. R. Evid. 1006.

8. Criminal Law ⚷1162

Error will be treated as harmless only if it is highly probable that the error did not contribute to the verdict.

9. Criminal Law ⚷1169.1(1)

Reviewing court may find an error harmless when the properly admitted evidence, in and of itself, furnished overwhelming proof of the defendant's guilt.

10. Criminal Law ⚷1169.10

Any error was harmless in the district court admitting into evidence forensic accountant's assignment of the label "investor" in her spreadsheet summarizing defendant's bank records and transactions, despite defendant's claim it invaded the province of the jury to decide ultimate issues because parties disputed whether the contracts in the alleged Ponzi scheme were investment contracts or merely credit agreements, in prosecution for securities fraud and bank fraud; jury had ample evidence in other exhibits and in witness testimony to support its guilty verdict that defendant touted his business ventures to potential clients as investments, and the properly admitted evidence overwhelmingly showed that defendant shuffled funds from one client to another without generating a profit, supporting theory that he operated a Ponzi scheme. Fed. R. Evid. 1006.

11. Criminal Law ⚷1139, 1144.13(2.1)

Court of Appeals reviews a preserved challenge to the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to the verdict.

12. Criminal Law ⚷1159.2(7)

In reviewing the sufficiency of the evidence, the relevant question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

13. Securities Regulation ⚷5.10

"Investment contract" for purposes of the Securities Act comprises of (1) an investment of money (2) in a common enterprise (3) with an expectation of profits to be derived solely from the efforts of others. Securities Act of 1933 § 2, 15 U.S.C.A. § 77b(a)(1).

See publication Words and Phrases for other judicial constructions and definitions.

14. Securities Regulation ⚷199

Evidence was sufficient to support finding that money from clients of defendant's company was pooled in common, as would support determination defendant's company's productive development contracts, in which clients made an initial monetary contribution and received the promise of a fixed rate of return, constituted "investment contracts" in order to support conviction for securities fraud under a Ponzi scheme theory under the Securities Act; defendant's counsel specifically asked forensic accountant who analyzed defendant's bank records if deposits from each client were mixed up with the moneys already in defendant's accounts and accountant confirmed that they were, and defendant's bank records corroborated that the money was pooled in common and as a result defendant's failure to turn a profit affected his client's collectively. Securities Act of 1933 § 2, 15 U.S.C.A. § 77b(a)(1).

See publication Words and Phrases for other judicial constructions and definitions.

15. Securities Regulation ⚷193

Evidence was sufficient to support finding that defendant put clients' money toward a single business and common enterprise, as would support determination defendant's company's productive development contracts, in which clients made an initial monetary contribution and received the promise of a fixed rate of return, constituted "investment contracts" in order to support conviction for securities fraud under a Ponzi scheme theory under the Securities Act; each client gave money to defendant's company, and the fact that the enterprise promised to make money through various businesses and investments did not mean that the clients' investments in company were not investments in a common venture. Securities Act of 1933 § 2, 15 U.S.C.A. § 77b(a)(1).

See publication Words and Phrases for other judicial constructions and definitions.

16. Securities Regulation ⚷5.11

Defendant's company's productive development contracts, in which clients made an initial monetary contribution and received the promise of a fixed rate of return, constituted "investment contracts" under the Securities Act, despite the contracts identifying participants as "creditors" and disclaimed any promise of return by way of investment, as would support conviction for securities fraud under a Ponzi scheme theory; the test for determining whether an agreement was an investment contract under the Securities Act had to be administered without regard to nomenclature, and thus, the labels in the agreements did not control. Securities Act of 1933 § 2, 15 U.S.C.A. § 77b(a)(1).

See publication Words and Phrases for other judicial constructions and definitions.

17. Securities Regulation ⚷193

It is not necessary to a Ponzi scheme that distribution be on a pro rata basis, for purposes of a conviction for securities fraud under the Securities Act. Securities Act of 1933 § 2, 15 U.S.C.A. § 77b(a)(1).

18. Securities Regulation ⚷193

Government was not required to prove that defendant knew the productive development contracts with his company's clients, in which clients made an initial monetary contribution and received the promise of a fixed rate of return, constituted securities under the Securities Act, in order to support conviction for securities fraud under a Ponzi scheme theory; defendant cited no authority interpreting provision of securities statute governing willfulness to require that a defendant know the agreements at issue were securities in order to have a bad purpose to disobey or disregard the law, and defendant did not cite to any precedent suggesting that specific intent to defraud clients would not be enough to qualify as willful conduct under Securities Act. Securities Exchange Act of 1934 § 32, 15 U.S.C.A. § 78ff(a).

19. Criminal Law ⚷20

To act "willfully" means to act voluntarily and intentionally, and with the specific intent to do something which the law forbids; that is to say, with a bad purpose either to disobey or to disregard the law.

See publication Words and Phrases for other judicial constructions and definitions.

20. Securities Regulation ⚷193

Evidence was sufficient to support finding that defendant knew his company's productive development contracts with client, in which clients made an initial monetary contribution and received the promise of a fixed rate of return, were securities, as would support conviction for securities fraud under a Ponzi scheme theory under the Securities Act; evidence unequivocally demonstrated that defendant managed company's money and that he ran the enterprise through his own accounts, thus defendant would have been aware money was pooled and that company's profits and risks were shared among clients. Securities Exchange Act of 1934 § 32, 15 U.S.C.A. § 78ff(a).

21. Securities Regulation ⚷5.10

Common enterprise, in determining whether a contract is an investment contract under the Securities Act, may involve the pooling of assets from multiple investors in such a manner that all share in the profits and risks of the enterprise. Securities Act of 1933 § 2, 15 U.S.C.A. § 77b(a)(1).

22. Criminal Law ⚷1130(2)

Defendant did not waive for appellate review his challenge to the calculation of the number of victims, for purposes imposing a six-level sentencing enhancement for the securities fraud resulting in substantial financial hardship for 25 or more victims, relating to defendant's company entering into financial agreements that amounted to a Ponzi scheme, despite the argument appearing for the first time in defendant's amended opening appellate brief; Government never opposed defendant's motion for leave to amend his opening appellate brief and Government addressed the argument in its response.

23. Criminal Law ⚷1156.2

Court of Appeals generally reviews preserved procedural sentencing challenges for abuse of discretion.

24. Criminal Law ⚷1158.34

When a defendant challenges the factual predicate supporting the district court's application of a sentencing enhancement, the Court of Appeals asks only whether the court clearly erred in finding that the government proved the disputed fact by a preponderance of the evidence.

25. Criminal Law ⚷1130(2)

Issues not advanced in an appellant's opening brief are deemed waived.

26. Sentencing and Punishment ⚷736

In a fraud case resulting in financial loss, the defendant's guideline sentencing range is determined in part by calculating the greater of either the intended loss or the actual loss. U.S.S.G. § 2B1.1.

27. Sentencing and Punishment ⚷668, 736

In a fraud case resulting in financial loss when calculating the greater of either the intended loss or the actual loss, the court may consider both losses stemming directly from the conduct underlying the offenses of conviction and losses stemming from any relevant conduct, including uncharged conduct. U.S.S.G. § 2B1.1.

28. Sentencing and Punishment ⚷736

In a fraud case resulting in financial loss, the sentencing court has considerable discretion in determining what evidence it regards as reliable for the loss calculation, and the loss calculation need not be precise. U.S.S.G. § 2B1.1.

29. Sentencing and Punishment ⚷300, 978

District court's methodology in its loss calculation supported the loss amount it reached of $3.5 million as a result of defendant's securities fraud relating to defendant's company entering into financial agreements that amounted to a Ponzi scheme, as would warrant 18-level sentencing enhancement; district court stated it would consider loss amounts based on both victims who testified during trial as well as those mentioned in the presentence investigation report (PSR), and the PSR stated that based on financial analysis and documentation in support for the number of victims and restitution provided by the government the restitution was conservatively estimated at $3,786,270, which according to Government represented the amount of financial loss to the victims, including others not listed in the indictment. U.S.S.G. § 2B1.1.

30. Sentencing and Punishment ⚷736

District court's calculation of the loss amount at $3.5 million based on Government's financial analysis presented by forensic accountant at trial was warranted, despite defendant's claim that Government's exhibit listing each individual whom forensic accountant had categorized as an investor and their gains and losses computed a net loss for all confirmed investors of only $3.2 million, for purposes of 18-level sentencing enhancement based on the amount of losses relating to defendant's conviction for securities fraud for his company entering into financial agreements that amounted to a Ponzi scheme; in a Ponzi scheme the gain to an individual investor in the scheme was not used to offset the loss to another individual investor in the scheme, thus when the investors who received payments from the recycled funds of other investors were removed from the exhibit, the resulting net loss was over $3.5 million. U.S.S.G. § 2B1.1.

31. Sentencing and Punishment ⚷978

District court was permitted to calculate loss or the number of victims of defendant's securities fraud scheme based on individuals who did not testify at trial, for purposes of sentencing enhancements for losses exceeding $3.5 million and when the offense resulted in substantial financial hardship to 25 or more victims relating to defendant's conviction for securities fraud for his company entering into financial agreements that amounted to a Ponzi scheme; Government conducted an extensive financial analysis in spending more than a year examining thousands of pages of transactions from defendant's bank accounts, defendant presented only general objections to the district court's factual findings during his sentencing proceedings, and defendant's company failed to turn a profit all while it continued to accept checks from more and more unsuspecting people. U.S.S.G. § 6A1.3(a).

32. Sentencing and Punishment ⚷964, 967

At sentencing, the court can consider all kinds of relevant information regardless of admissibility at trial (including hearsay that has never been tested by cross-examination), provided it has sufficient indicia of reliability to support its probable accuracy. U.S.S.G. § 6A1.3(a).

33. Criminal Law ⚷1042.3(4)

Defendant forfeited for appellate review claim that individuals listed in the presentence investigation report (PSR) but not the indictment were not victims of the offense within the meaning statute governing discretionary conditions of supervised release, in challenging order of restitution to individuals directly harmed by his criminal activity of securities fraud for his company entering into financial agreements that amounted to a Ponzi scheme; defendant failed to properly raise the objection below, at defendant's sentencing the district court asked whether there were any objections on the terms of supervised release and defense counsel replied "no." 18 U.S.C.A. § 3563(b).

34. Criminal Law ⚷1042.3(4)

Court of Appeals would review for plain error defendant's forfeited claim that individuals listed in the presentence investigation report (PSR) but not the indictment were not victims of the offense within the meaning statute governing discretionary conditions of supervised release, in challenging order of restitution to individuals directly harmed by his criminal activity of securities fraud for his company entering into financial agreements that amounted to a Ponzi scheme, despite defendant failing to engage with the plain-error standard in his appellate briefs; Government failed to request plain error review on the issue, which cut against waiver. 18 U.S.C.A. § 3563(b).

35. Criminal Law ⚷1130(5)

Typically, the Court of Appeals deems a forfeited argument waived when an appellant fails to cite the plain-error standard on appeal.

36. Criminal Law ⚷1030(1)

To prevail under the plain-error standard, an appellant must show that: (1) the district court committed an error; (2) that error was plain, that is to say, clear or obvious; (3) the error affected his substantial rights; and (4) leaving the error uncorrected would seriously affect the fairness, integrity or public reputation of judicial proceedings; the four prongs may be evaluated in any order.

37. Criminal Law ⚷1030(1)

Plain error must be indisputable.

38. Criminal Law ⚷1030(1)

Appellant can show that an error is plain by pointing either to binding on-point precedent or showing that his theory is compelled by constitutional law, statute, regulation, or other legal mandate.

39. Criminal Law ⚷1042.3(4)

Defendant failed to demonstrate that the district court clearly or obviously erred in determining that the victims identified in the presentence investigative report (PSR) were persons directly harmed by defendant's securities fraud scheme charged in the indictment, in the district court ordering defendant pay restitution as part of his supervised release following his securities fraud conviction; defendant cited neither binding on-point precedent nor compelling authority that would foreclose the district court's ruling, specifically he failed to point to any controlling or compelling authority that would have prohibited the court from determining that the victims identified in the PSR were persons directly harmed by the scheme charged in the indictment. 18 U.S.C.A. §§ 3563(b), 3583.

40. Criminal Law ⚷1042.3(4)

Defendant failed to demonstrate that the district court clearly or obviously erred in concluding that the individuals listed in the presentence investigative report (PSR) were, by a preponderance of the evidence, victims of defendant's securities fraud crime, in the district court ordering defendant pay restitution as part of his supervised release following his securities fraud conviction; defendant failed to cite any authority to suggest that the district court's reliance on the PSR to determine the number of victims constituted indisputable error, and a PSR generally bore sufficient indicia of reliability to permit the district court to rely on it at sentencing. 18 U.S.C.A. §§ 3563(b), 3583.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO [Hon. John A. Woodcock, U.S. District Judge] [Hon. Gustavo A. Gelpí, U.S. District Judge]

Alejandra Bird-López, Assistant Federal Public Defender, with whom Héctor L. Ramos-Vega, Interim Federal Public Defender, District of Puerto Rico, and Franco L. Pérez-Redondo, Assistant Federal Public Defender, Supervisor, Appeals Section, were on brief, for appellant.

Katherine Twomey Allen, with whom W. Stephen Muldrow, United States Attorney, Mariana E. Bauzá-Almonte, Assistant United States Attorney, Chief, Appellate Division, Gregory B. Conner, Assistant United States Attorney, and United States Attorney's Office were on brief, for appellee.

Before Rikelman, Lynch, and Howard, Circuit Judges.

RIKELMAN, Circuit Judge.

Carlos Maldonado appeals his securities fraud conviction and sentence. He contends that the district court improperly admitted at trial "summaries" of his bank records under Federal Rule of Evidence 1006, even though they were rife with hearsay, and that insufficient evidence supported the jury's verdict. He also argues that the court miscalculated his sentence because it incorrectly determined the number of victims and their total losses. Finally, he claims that the court was wrong to order him to pay restitution based on harm to individuals not identified in the indictment. Our review reveals no basis for disturbing the jury's verdict, the sentence imposed, or the restitution order. As a result, we affirm.

I. BACKGROUND

A. Relevant Facts

In 2005, Maldonado formed a company called Business Planning Resource International Corporation (BPRIC). BPRIC's purported mission was to raise money to develop various businesses and to help individuals "facilitate the resources [they] need to maximize [their] productive development." Promoters for BPRIC, some of whom were insurance agents, persuaded clients [1] to enter into financial agreements with the company. These agreements were generally called "Productive Development Contracts." Each client made an initial monetary contribution and received the promise of a fixed rate of return. But the size of the initial contributions, the amount of earnings guaranteed, and the duration of the agreements varied. For example, one client agreed to give BPRIC $15,000 in exchange for 17% annual earnings for five years. Another client agreed to pay BPRIC $50,000 in exchange for 50% annual earnings for one year.

Ultimately, BPRIC failed to fulfill its contractual obligations to its clients. In 2016, a grand jury indicted Maldonado on one count of securities fraud and fifteen counts of bank fraud. See 15 U.S.C. §§ 78j(b), 78ff(a); 18 U.S.C. §§ 2, 1344. The government alleged in the indictment that Maldonado ran a Ponzi scheme, meaning that he recycled money from later investors to pay earlier investors, even though BPRIC never turned a profit. The indictment listed twelve transactions involving

1. Because Maldonado and the government dispute whether the BPRIC agreements were investment contracts within the meaning of the securities laws, Maldonado describes these individuals as "creditors" whereas the government calls them "investors." We refer to them as "individuals" or "clients."

eight alleged clients (some of which were households). Each of these individuals (or a representative from each household) subsequently testified at trial. The amounts they invested ranged from $10,000 to $164,000. The indictment also alleged that, "by depositing the investors' checks in the bank account for BPRIC," Maldonado committed bank fraud against the individuals' financial institutions.

B. Procedural History

Maldonado's case proceeded to trial, which lasted nine days and included twenty-three witnesses for the government. One of the government's first witnesses was an attorney who testified generally about Ponzi schemes. He explained that a Ponzi scheme involves shuffling money from one investor to reimburse another, instead of conducting profit-generating activity.

The government presented fifteen witnesses who had provided money to Maldonado.[2] It introduced each witness's Productive Development Contract, checks they issued to and received from BPRIC, BPRIC promotional materials they obtained, and their correspondence with BPRIC and Maldonado. Each witness explained that they believed they were "investing" their money in BPRIC. Specifically, many witnesses shared an understanding that BPRIC would use their money to develop other companies. Most witnesses testified that they received information about specific companies that BPRIC would invest in or that they could invest in directly. Those companies included, among others, Datavos, Pet Card Systems, and Glorimar Fashions and Tailoring LLC. At various points, Maldonado also touted to prospective and current clients the potential profits that could be earned through ventures such as investments in "Chinese bonds" and mining operations in Brazil. Some witnesses testified that Maldonado told them BPRIC would grow their money through real property or stock market investments.

Alwin Díaz, one of Maldonado's promoters, also testified for the government. Díaz said that Maldonado conducted a training for promoters and claimed to operate "five or six other companies" "under" BPRIC, including Pet Card Systems and Datavos. According to Díaz, Maldonado showed the promoters "how each one of those companies was supposed to operate" so that they could share this information with potential clients. Specifically, Maldonado taught promoters to tell prospective clients that BPRIC would "distribute [their] money among each one of the companies that were under" BPRIC in order to generate earnings. Díaz also testified that Maldonado instructed promoters not to use the word "investment," because "this word would entail other things," and to use the phrase "capital accumulation" instead.

To demonstrate how Maldonado used the clients' money, the government introduced the testimony of Mirelis Domínguez, a forensic accountant for the Federal Bureau of Investigation. Domínguez analyzed approximately 10,000 transactions in Maldonado's bank accounts. She used this information to create a spreadsheet, Exhibit 327, which the district court admitted into evidence. The spreadsheet included a "general category" column, in which Domínguez assigned a label to each transaction -- for example, "Investor," "Promoter," or "Investment." When the government

2. Testifying witnesses also included several clients who had not been listed in the indictment.

asked Domínguez how she categorized transactions, she explained that she consulted "supporting documentation," including "interviews" -- apparently referring to government interviews of potential victims, which she testified that she "reviewed" and in some cases "participated in."

Domínguez then used this spreadsheet to generate several additional tables and graphs, including pie charts and flow charts. For example, one table, Exhibit 306, listed each individual whom Domínguez had categorized as an investor (not just those who had testified at trial), their cash inflows and outflows, and their net gains or losses. It also included "comments," such as "[i]nterviewed by AUSA." A separate pie chart exhibit showed that 93% of the money entering Maldonado's accounts came from clients. Another pie chart exhibit showed that over half of the money leaving Maldonado's accounts went to clients and promoters. Domínguez also examined bank accounts with "just a few transactions," including accounts for Datavos, Glorimar Fashions, and Pet Card Systems. For these accounts, Domínguez created smaller tables summarizing their activity.

The government introduced Domínguez's exhibits under Rule 1006 of the Federal Rules of Evidence, which permits "summaries" of voluminous evidence. <u>See</u> Fed. R. Evid. 1006. Maldonado objected to several of the exhibits, including Exhibits 306 and 327. He argued that, by relying on interviews with alleged victims, Domínguez impermissibly incorporated hearsay into the exhibits. Maldonado also contended that several exhibits included Domínguez's assumptions and embellishments and therefore those exhibits were not neutral summaries as required under the evidence rules. The district court overruled the objections.

The jury convicted Maldonado on all counts, and the parties then prepared for sentencing. Ultimately, the U.S. Probation Office drafted a Presentence Investigation Report (PSR), and Maldonado objected to several of its findings. Specifically, he objected to the probation officer's application of an 18-level enhancement for "loss exceed[ing] $3,500,000" and to the application of a six-level enhancement "[b]ecause the offense resulted in substantial financial hardship to twenty-five or more victims." According to Maldonado, in calculating the total loss, the district court could consider only the financial harm to "the alleged victims that testified at trial." The court rejected this argument, labeling it a "blanket" objection, and explained that it determined a "loss amount based on <u>both</u> victims who testified during trial as well as those others mentioned in the PSR." In the end, the court sentenced Maldonado to 135 months' imprisonment.

The district court also ordered Maldonado to pay restitution in the amount provided for by the PSR, which listed forty-four victims with a collective loss of just over $2.1 million. The court explained that it would require restitution under the Mandatory Victim Restitution Act of 1996 (MVRA), 18 U.S.C. § 3663A, which applies to defendants convicted of certain crimes, including bank fraud. <u>See</u> <u>id.</u> § 3663A(a)(1). It noted, however, that the MVRA did not apply to Maldonado's securities fraud conviction. Accordingly, the court ordered restitution for the securities fraud conviction as a condition of Maldonado's supervised release under 18 U.S.C. § 3583. <u>See</u> <u>id.</u> §§ 3583(d), 3563(b)(2).

[1] Maldonado timely appealed. In March 2025, less than two weeks before we heard oral argument in this case, the government filed a Rule 28(j) letter indicating that it was no longer pursuing Maldonado's bank fraud convictions and agreed that we should vacate those convictions.[3]

II. DISCUSSION

We now analyze each of Maldonado's legal claims, moving chronologically through the stages of his prosecution. First, Maldonado argues that the district court improperly admitted evidence summarizing his bank account activity under Federal Rule of Evidence 1006. We conclude that any error in admitting this evidence was harmless. Second, Maldonado challenges the jury's finding that the Productive Development Contracts were securities, contending that insufficient evidence supported this conclusion. We disagree, both because Maldonado misreads our precedent defining "investment contracts" and because sufficient evidence supported the jury's verdict. Finally, Maldonado challenges the district court's loss calculation and its restitution order. We conclude that the court's loss calculation was fully supported by reliable evidence, and that Maldonado has failed to show that the restitution award was legally invalid.

A. Evidence Admitted Under Rule 1006

[2–4] We review evidentiary rulings for abuse of discretion. See United States v. Burgos-Montes, 786 F.3d 92, 114 (1st Cir. 2015). Under this umbrella standard, we evaluate questions of law de novo. See id. And if we hold that an abuse of discretion occurred, we ask whether the court's error was nonetheless harmless. See United States v. Abdelaziz, 68 F.4th 1, 70 (1st Cir. 2023).

[5, 6] Maldonado argues that the district court abused its discretion by improperly admitting certain exhibits and accompanying testimony into evidence under Federal Rule of Evidence 1006.[4] Rule 1006 permits the introduction of "summary" materials. Generally, "[a]n original writing, recording, or photograph is required in order to prove its content." Fed. R. Evid. 1002. But Rule 1006 provides an exception, allowing a party to "use a summary, chart, or calculation to prove the content of voluminous writings . . . that cannot be conveniently examined in court." Fed. R. Evid. 1006.[5] For a summary to be admissible under Rule 1006, it must meet several criteria. For one, the underlying source material must be admissible. See United States v. Kumar, 112 F.4th 30, 38 (1st Cir. 2024); United States v. Milkiewicz, 470 F.3d 390, 396 (1st Cir. 2006). And, "[t]he proponent must show that the voluminous

3. In a responsive 28(j) letter, Maldonado contends that vacating the bank fraud charges in accordance with the government's request "reverberates beyond those convictions." He argues that the bank fraud charges permitted the government to introduce otherwise time-barred evidence and generally "saturated the trial," creating "prejudicial spillover" into his securities fraud conviction. But Maldonado failed to make these arguments in his opening brief. The spillover argument was available to Maldonado at the time he submitted that brief, and we do not accept belated arguments as a matter of course. Thus, we hold that Maldonado's spillover argument was waived. See Stauffer v. IRS, 939 F.3d 1, 9 n.13 (1st Cir. 2019) ("New arguments cannot be raised in a Rule 28(j) letter.").

4. The government argues that Maldonado waived his Rule 1006 challenge because he failed to "challenge a specific exhibit or part of Domínguez's testimony." But Maldonado objected to specific exhibits expressly during trial, including specific portions of such exhibits, and referenced these objections again in his opening brief. Thus, the government's waiver argument fails, and we move along to the merits.

5. The text of Rule 1006 was amended in December 2024. We cite the text of the Rule as it existed at the time of Maldonado's 2019 trial.

source materials are what the proponent claims them to be and that the summary accurately summarizes the source materials." Milkiewicz, 470 F.3d at 396. Maldonado argues that several of the government's exhibits flunked these requirements because they were impermissibly based on hearsay and embellished with inferences and conclusions.

[7] Although the record is not crystal clear on this point, we agree with Maldonado that inadmissible hearsay may have played an improper role in the development of the summary exhibits. Domínguez testified that at least in some instances, she relied on government interviews to create exhibits:

> [Government:] So, you go [through] all 10,000 transactions, how do you categorize each transaction? What documents did you review to satisfy yourself that you're going to categorize each transaction as A instead of B?
>
> [Domínguez:] Okay, so it's multiple transactions. So if it's a deposit a bank will provide you with a deposit slip, a check. Also, when I'm categorizing some transactions, for example related to investors, I would review if there's [an] interview, if there is [a] contract, any other supporting documentation.

Thus, it is not apparent from Domínguez's testimony whether she relied on the interviews merely to confirm what the admissible documentary evidence already suggested, or whether she used the interviews as an independent basis for categorizing some transactions as involving investors. Nor did Maldonado elicit this testimony on cross-examination. But if the out-of-court interviews informed Domínguez's categorizations, then these categorizations were inadmissible because they amounted to either single or double hearsay.[6] See id.

[8, 9] Regardless, any error in admitting Domínguez's categorizations into evidence was harmless. "An error will be treated as harmless only if it is highly probable that the error did not contribute to the verdict." Abdelaziz, 68 F.4th at 70 (quoting United States v. Kilmartin, 944 F.3d 315, 338 (1st Cir. 2019)). "Practically speaking, a reviewing court may find an error harmless when the properly admitted evidence, in and of itself, furnished overwhelming proof of the defendant's guilt." Kilmartin, 944 F.3d at 338.

On our review of the record, "we are confident that the guilty verdict[ ]" on Maldonado's securities fraud conviction is fully sustained "by the properly admitted evidence." Id. at 339. To make this determination, we look at the evidence that Maldonado does not challenge. Then, we consider whether this evidence "overwhelmingly" supported the government's theory that Maldonado recycled money from one client to another instead of engaging in profitable investment activity. Id. at 338.

Crucially, Maldonado does not challenge the admissibility of the underlying bank records. Nor did Maldonado challenge during trial the majority of Exhibit 327. To be sure, Maldonado objected to the "category" columns of the spreadsheet as "not based on the bank records." But he expressly approved the remaining columns based on those same underlying records.

6. From what we can tell, the interviews involved clients explaining that they provided money to Maldonado, and the interviews were used in the summary to prove that very point. Thus, the record indicates that the out-of-court statements were admitted for their truth, and the government does not argue otherwise. Cf. United States v. Appolon, 695 F.3d 44, 62 (1st Cir. 2012) (concluding that district court did not abuse its discretion in admitting Rule 1006 evidence where underlying statements were not admitted for their truth).

These columns included information like the "Payor" and "Payee" for each transaction, along with a "Description." This data alone supported Maldonado's conviction because it showed whether each transaction involved payment to or from an individual or business or investment activity. For example, one transaction in the spreadsheet was a wire payment listing "Scottrade Inc." -- a brokerage company -- as the "Payor." It was clear from the face of the transaction, then, that it represented an inflow from an investment rather than a payment to or from a client. Other transactions in the spreadsheet, by contrast, listed the names of individuals as "Payor" or "Payee." Still others listed neither Payor nor Payee but included a "Description" (also not a challenged column) that clearly evidenced non-business activity -- for example, one $23.54 outflow to "Burger King 3987 Rio Piedra."

The government charged Maldonado with operating a Ponzi scheme. What mattered to its case was showing that returns to earlier investors were paid from contributions by later investors, rather than from legitimate business profits. The government relied on the properly admitted portions of Exhibit 327 to demonstrate that Maldonado, while touting that he would create profits through various forms of business activity, overwhelmingly recycled funds from initial investors to pay off subsequent investors. And it also relied on this evidence to show that hardly any transactions indicated income-generating business activity.

Even if Exhibit 327 were excluded, then, other unchallenged summary exhibits would overwhelmingly support the jury's verdict. For one, Maldonado does not argue that Exhibit 328 was inadmissible. That exhibit excerpted portions of Exhibit 327 and did not include a "Category" or a "General Category" column. It presented snapshots of the times immediately preceding and following deposits from the testifying witnesses. In its closing argument, the government walked the jury through Exhibit 328. And it pointed out that, for example, on May 21, 2009, BPRIC's bank account had a negative balance of $3,084.09. Then, the exhibit documented that Maldonado accepted a $15,000 check from Sonia Delgado, bringing the balance to $11,915.91, even though BPRIC had yet to turn a profit. The exhibit also showed that, over the next month, Maldonado spent money at several retail stores and on transfers to various individuals until his remaining balance was just $11.99. None of those transactions involved "invest[ment] in different companies," which is what Delgado testified Maldonado sold to her.

Additionally, the unchallenged evidence showed that Maldonado did not engage in meaningful business activity with Datavos, Glorimar Fashions, or Pet Card Systems. Take Exhibit 313, which Maldonado does not challenge, and which summarized the activity in those accounts until they closed. It indicated that BPRIC deposited $50,000 in the Datavos account but withdrew $49,000 less than one month later. Similarly, it indicated a cash deposit of $4,000 into that account in September 2009, followed by a $3,500 check to BPRIC less than two weeks later. Other than administrative charges and fees "and a few debits to restaurants and gasoline," there was no other significant activity in the Datavos account. Similarly, Exhibit 313 showed no significant transactions in the Glorimar Fashions account, other than a $299.60 deposit in September 2010, a $229.60 check paid from the account in April 2011, and bank charges. And in the Pet Card Systems account, Exhibit 313 showed just five small deposits totaling $950, one cash deposit of $4,000, one check to BPRIC in the amount of $3,500, and administrative fees.

Several witnesses testified that Maldonado told them their money would be spent developing these businesses, and Díaz testified that promoters were instructed to make that exact pitch. But this unchallenged summary evidence demonstrated that the so-called business activity was minimal at best. In its closing argument, the government made much of Exhibit 313, pointing out that the limited transactions in these accounts showed that when Maldonado received money from clients, "it [went] out to pay other investors" rather than "to Datavos," for example. Even without Exhibit 327, then, we conclude that it is highly probable that the jury would have convicted Maldonado of securities fraud based on this unchallenged evidence.

[10] Maldonado also contends that the "investor" label that Domínguez assigned and used in her spreadsheet invaded the province of the jury to decide ultimate issues in the case, and the district court should have excluded the exhibit for that reason. According to Maldonado, Domínguez should not have been permitted to label any category of individuals as "investors" rather than "creditors" because the parties disputed whether the contracts at issue were investment contracts or merely credit agreements. But, as we have explained, any evidentiary error related to this spreadsheet would be harmless. The jury had ample evidence in other exhibits and in witness testimony to support its verdict that Maldonado touted his business ventures to potential clients as investments. And the properly admitted evidence overwhelmingly showed that Maldonado shuffled funds from one client to another without generating a profit, thus supporting the government's theory that he had operated a Ponzi scheme.

B. Securities Fraud

[11, 12] Next, Maldonado argues that the government failed to prove beyond a reasonable doubt that the Productive Development Contracts were securities. We review a preserved challenge to the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to the verdict. See United States v. Falcón-Nieves, 79 F.4th 116, 123-24 (1st Cir. 2023). "[T]he relevant question is whether . . . any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id. at 123 (quoting United States v. Woodward, 149 F.3d 46, 56 (1st Cir. 1998)). Based on the record as a whole, we reject Maldonado's sufficiency challenge.

[13] We begin by setting out the applicable legal framework. The Securities Act of 1933 defines a "security" as "any note, stock, . . . investment contract, . . . or any certificate of interest or participation in . . . any of the foregoing." 15 U.S.C. § 77b(a)(1) (emphasis added). In turn, the U.S. Supreme Court has held that "an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party . . . ." SEC v. W.J. Howey Co., 328 U.S. 293, 298-99, 66 S.Ct. 1100, 90 L.Ed. 1244 (1946). Thus, an investment contract comprises (1) an investment of money (2) in a common enterprise (3) with an expectation of profits to be derived solely from the efforts of others. See SEC v. SG Ltd., 265 F.3d 42, 46 (1st Cir. 2001). The Supreme Court went on to emphasize in Howey that the definition of an investment contract "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." 328 U.S. at 299, 66 S.Ct. 1100.

Elaborating on the "common enterprise" prong, we have held that a common enterprise can be shown through horizontal commonality, defined as "the pooling of assets from multiple investors in such a manner that all share in the profits and risks of the enterprise." SG Ltd., 265 F.3d at 50. Contrary to Maldonado's assumption, however, we have not held that horizontal commonality is necessary to establish the existence of an "investment contract."[7] But, because the government chose to prosecute this case under the horizontal commonality theory, our analysis focuses on that theory of liability.

Maldonado contends that the evidence was insufficient to show that the clients' money was pooled in common or put towards a single business enterprise. He also notes that the Productive Development Contracts did not use the words "security" or "investment," and he points out that the clients did not have proportional shares in BPRIC. Finally, he insists that, even if the Productive Development Contracts were securities, the government did not meet its burden to show that Maldonado knew that the agreements were securities.

[14] We conclude that each of Maldonado's arguments is either unsupported by the record or legally incorrect. To begin, we have held that "Ponzi schemes typically satisfy the horizontal commonality standard," and Maldonado was convicted on a Ponzi scheme theory. Id. at 51. Thus, Maldonado faces an uphill battle to show that the government failed to prove a common enterprise.

As to Maldonado's first argument, the record belies his claim that no evidence demonstrated that the clients' money was "pooled in common." Maldonado's counsel specifically asked Domínguez if deposits from each client were "mixed up with the moneys" already in Maldonado's accounts, and Domínguez confirmed that they were. And Maldonado's bank records corroborated this testimony.[8] As a result, Maldonado's failure to turn a profit affected his clients collectively. Thus, the government did present evidence of pooling.

[15] Next, Maldonado asserts that he did not put clients' money toward "a single business and common enterprise." Instead, he contends, "a variety of businesses were discussed with no specific representation that any one person's money would be used in a specific way." We reject Maldonado's assumption that under the common pooling theory, there must be only a single common pool. But regardless, his argument fails because the government presented evidence that each client gave money to BPRIC. The fact that this enterprise promised to make money through various businesses and investments does not mean that the clients' investments in BPRIC were not investments in a common venture.

[16] Maldonado then turns to the text of the Productive Development Contracts, noting that they identified participants as "creditors" and disclaimed any "promise of return by way of investment." But we have emphasized that the test for determining whether an agreement is an investment

7. Given the government's theory of the case, we, like the Third Circuit in SEC v. Infinity Group Co., 212 F.3d 180, 187 n.8 (3d Cir. 2000), need not address at this time whether "vertical commonality" suffices to satisfy the "common enterprise" prong.

8. As we explained above, Maldonado does not object to the admission of the underlying bank records that were used to create the Rule 1006 summaries.

contract "must be administered without regard to nomenclature." SG Ltd., 265 F.3d at 47. Thus, the labels in the agreements do not control.

[17] With his last argument on this issue, Maldonado contends that the record does not show "that payments received were made according to any pro rata or uniform system." But we have never held that a pro rata share or uniform system of profits is required to demonstrate a common enterprise.[9] Instead, even if each instrument has a different value, we have observed that when "most of the potential gain" depends on the "development" of the instruments collectively, a security can exist.[10] Rodriguez v. Banco Cent. Corp., 990 F.2d 7, 11 (1st Cir. 1993).

Maldonado argues in the alternative that even if the BPRIC contracts qualify as securities, that was news to him. Thus, Maldonado contends, the government failed to prove that he knew that the contracts were securities, meaning that he could not have acted "willfully." See 15 U.S.C. § 78ff(a) (requiring securities violations to be "willful[ ]" to subject the violator to fines or imprisonment). The government responds that it was not required to prove that Maldonado knew the contracts were securities, and in any case, the evidence demonstrated that he was in the know.

[18, 19] We see no basis for Maldonado's alternative argument. To act "willfully" means to act "voluntarily and intentionally, and with the specific intent to do something which the law forbids . . .; that is to say, with a bad purpose either to disobey or to disregard the law." United States v. Bailey, 405 F.3d 102, 111 n.4 (1st Cir. 2005); see also Rehaif v. United States, 588 U.S. 225, 232, 139 S.Ct. 2191, 204 L.Ed.2d 594 (2019) (stating that the "purpose of scienter" in criminal statutes is "to separate wrongful from innocent acts"). But Maldonado cites no authority interpreting § 78ff(a) to require that a defendant know that the agreements at issue were securities in order to have a "bad purpose" to "disobey or disregard the law." For example, he does not cite to any precedent suggesting that specific intent to defraud his clients would not be enough to qualify as willful conduct under § 78ff(a).

[20, 21] In any event, the evidence at trial demonstrated that Maldonado knew the contracts were securities. As explained above, Maldonado attacks the "common enterprise" prong of the test for investment contracts. But the evidence at trial fully supported a finding that he knew that BPRIC was a common enterprise. Recall, a common enterprise may involve "the pooling of assets from multiple investors in

9. To the extent that Maldonado suggests that individuals must share in the profits and risks of an enterprise on a pro rata basis for an agreement to be an investment contract, he relies on cases from the Seventh and Third Circuits. See Goldberg v. 401 N. Wabash Venture LLC, 755 F.3d 456, 465 (7th Cir. 2014); Infinity Grp., 212 F.3d at 187 n.8. These cases do not govern in our circuit and are inconsistent with our precedent. And Maldonado mischaracterizes our holding in SG Ltd. Although the profits were distributed on a pro rata basis in that case, we held only that a common enterprise is established when "investors share in the profits and risks of the enterprise," and we "endorse[d] the SEC's suggestion that Ponzi schemes typically satisfy the horizontal commonality standard." SG Ltd., 265 F.3d at 50-51. But it is not necessary to a Ponzi scheme that distribution be on a pro rata basis.

10. The government argues that even if the agreements were not investment contracts, they were "note[s]," which are a separate category of security under 15 U.S.C. § 77b(a)(1). Because we conclude that sufficient evidence supported the jury's finding that the agreements were investment contracts, we do not reach this argument.

such a manner that all share in the profits and risks of the enterprise." SG Ltd., 265 F.3d at 50. The evidence unequivocally demonstrated that Maldonado managed BPRIC's money, and that he ran the enterprise through his own accounts. Thus, a rational jury could conclude that Maldonado was well aware that the money was pooled and that BPRIC's profits and risks were shared among clients. As a result, we reject Maldonado's sufficiency challenge.

C. The District Court's Sentencing Calculations

[22–25] Maldonado also argues that the district court made mathematical and factual errors in calculating his sentence, but we disagree.[11] We generally review preserved procedural sentencing challenges for abuse of discretion. See United States v. Viloria-Sepulveda, 921 F.3d 5, 8 (1st Cir. 2019). When a defendant "challenges the factual predicate supporting the district court's application of a sentencing enhancement, 'we ask only whether the court clearly erred in finding that the government proved the disputed fact by a preponderance of the evidence.'" United States v. Cannon, 589 F.3d 514, 517 (1st Cir. 2009) (quoting United States v. Luciano, 414 F.3d 174, 180 (1st Cir. 2005)).

[26–28] As we have explained, the district court applied an 18-level enhancement because it concluded that Maldonado caused over $3.5 million of losses and a six-level enhancement because the offense resulted in substantial financial hardship to twenty-five or more victims. "In a fraud case resulting in financial loss, the defendant's guideline sentencing range is determined in part by calculating the greater of either the intended loss or the actual loss." United States v. Naphaeng, 906 F.3d 173, 179 (1st Cir. 2018); see also U.S. Sent'g Guidelines Manual § 2B1.1, cmt. n.3(A)(i)-(ii) [hereinafter "U.S.S.G."]. The court may consider "both losses stemming directly from the conduct underlying the offenses of conviction and losses stemming from any relevant conduct (including uncharged conduct)." United States v. Flete-Garcia, 925 F.3d 17, 28 (1st Cir. 2019). Further, the sentencing court has "considerable discretion in determining what evidence" it regards as reliable for the loss calculation, and the "loss calculation need not be precise." Id.

Maldonado presents two challenges to the district court's calculations of loss and the number of victims, which in turn determined his sentence. First, he argues that the district court made mathematical errors in calculating the loss amount. Second, he argues that the district court lacked sufficient evidence to consider any purported losses by individuals who did not testify at trial. We reject both arguments as inconsistent with our case law and the record.

[29] As to the loss calculation itself, Maldonado contends that the district court's methodology did not support the number it reached. The court stated that it would "consider loss amount[s] based on both victims who testified during trial as well as those others mentioned in the PSR." Because the sum of the loss

11. The government argues that Maldonado waived his challenge to the number of victims because this argument appeared for the first time in his amended opening brief. But the government never opposed Maldonado's motion for leave to amend his opening brief, and it addressed this argument in its response. To be sure, it is a "familiar rule" that "issues not advanced in an appellant's opening brief are deemed waived." United States v. DiTomasso, 621 F.3d 17, 26 n.7 (1st Cir. 2010), vacated on other grounds, 565 U.S. 1189, 132 S.Ct. 1533, 182 L.Ed.2d 151 (2012). But under these circumstances, we see no reason to apply this rule to an argument raised in Maldonado's amended opening brief.

amounts for the named victims in the PSR is just over $2.1 million, Maldonado insists that the district court committed a reversible mathematical error by concluding that the loss amount exceeded $3.5 million.

We discern no mathematical error by the district court. In addition to listing the restitution victims, the PSR stated that "[a]s evidenced by financial analysis and documentation in support for the number of victims and restitution provided by the [g]overnment, restitution was conservatively estimated at $3,786,270. According to the [g]overnment, this represents the amount of financial loss to the victims, including others not listed in the [i]ndictment."[12] When the court explained that it relied on the PSR, then, we understand it to have relied on this $3.7 million figure.

[30] Maldonado next points to a separate alleged mathematical error. He argues that, even assuming that the court relied on the PSR's $3.7 million number, which was based on the government's financial analysis that Domínguez presented at trial, this evidence does not add up to a loss of over $3.5 million. Maldonado notes that Exhibit 306 computes a net loss for all confirmed investors of only $3.2 million. But Maldonado misunderstands the court's loss calculation. As the government points out, the U.S. Sentencing Guidelines instruct how courts should calculate loss resulting from a Ponzi scheme. See U.S.S.G. § 2B1.1, cmt. n.3(F)(iv). As the relevant application note explains, in a Ponzi scheme, "the gain to an individual investor in the scheme shall not be used to offset the loss to another individual investor in the scheme." Id. When the investors who received payments from the recycled funds of other investors are removed from the exhibit, the resulting net loss is over $3.5 million.[13]

[31] We turn next to Maldonado's argument that the district court was not permitted to calculate loss or the number of victims based on individuals who did not testify at trial. Maldonado contends that the court lacked evidence that any of these individuals were victims of criminal conduct. He insists that the record "did not unambiguously establish fraudulent representations" to non-testifying individuals, nor did it show Maldonado's "criminal fraudulent intent" as to non-testifying individuals. According to Maldonado, even if he entered into contracts with these individuals and then failed to repay them, these facts do not show that he criminally defrauded them.

[32] We conclude that the district court did not err in considering the loss

12. As the record shows and Maldonado admits, this $3.7 million figure came from the government's financial analysis that Domínguez presented at trial, specifically Exhibit 306.

13. Maldonado replies that these gains should not be eliminated from the net loss calculation. He argues that subtracting "the 'net gains' of the so-called 'confirmed investors' is not appropriate here because some of these [individuals] did not disburse money to BPRIC in the first place, and therefore cannot be considered investors, creditors, or victims." But this argument misunderstands the government's math. Exhibit 306 already includes the "net gains" of some clients, including those that did not disburse money to BPRIC. To conform Exhibit 306 to the Sentencing Guidelines, then, the court correctly subtracted these gains from the exhibit's calculation. To the extent that Maldonado asserts instead that certain individuals who received disbursements were not in fact BPRIC clients and thus should have been excluded from the loss calculation altogether, his argument, even if correct, would not impact the final calculation. Removing those individuals (and their gains) from the loss calculation at the outset would have the same effect as deducting their gains on the back end, just as the court did here.

suffered by non-testifying witnesses as set forth in Exhibit 306. Again, sentencing courts have considerable discretion in determining what sources are reliable, and they may even consider uncharged conduct. See Flete-Garcia, 925 F.3d at 28. In this case, the government conducted an extensive financial analysis, spending more than a year examining thousands of pages of transactions from Maldonado's bank accounts. We see no clear error in the district court's decision to credit this analysis. And the fact that Maldonado objected at trial to the admissibility of Exhibit 306 under Federal Rule of Evidence 1006 does not change our conclusion. At sentencing, "the court can consider all kinds of relevant information regardless of admissibility at trial (including hearsay that has never been tested by cross-examination), provided it has 'sufficient indicia of reliability to support its probable accuracy.' " United States v. Mills, 710 F.3d 5, 15 (1st Cir. 2013) (citations omitted) (quoting U.S.S.G. § 6A1.3(a)). Finally, Maldonado presented only general objections to these factual findings during his sentencing proceedings. He argued that the government's assessment "d[id] not encompass all the information that would be relevant to make a proper and complete forensic accounting analysis" and that it did not include at least one of Maldonado's accounts. But he failed to introduce contrary evidence. See United States v. Flores-Seda, 423 F.3d 17, 21 (1st Cir. 2005) (concluding that the district court's loss calculation was reasonable in part because the defendant offered no "evidence to the contrary").

Further, we have approved district courts' decisions to consider losses suffered by non-testifying witnesses when they have found that those losses were part of the defendant's "scheme." See, e.g., United States v. Curran, 525 F.3d 74, 78 (1st Cir. 2008). Here, Maldonado contends that "while the government presented evidence of what witness[es] 'believed' ... about their money when they handed over checks and at other points, it proffered no commensurate evidence as to the non-testifying" individuals. But the evidence showed that Maldonado systematically used the same deceptive tactics to draw in clients. For example, Díaz explained that Maldonado instructed promoters that BPRIC invested in several specific companies and provided materials for them to distribute to prospective clients describing these companies. In turn, Domínguez's unchallenged testimony showed that BPRIC did not provide sufficient funds to those entities to make them viable businesses. Thus, BPRIC failed to turn a profit, all while it continued to accept checks from more and more unsuspecting people. In light of this evidence, it was reasonable for the district court to consider the losses of the non-testifying victims in its calculation. See id. at 81 (holding that, in light of patterns evidencing defendant's "scam," it was reasonable for the district court to conclude that payments to the defendant "were actual losses resulting from the offense").

D. The District Court's Restitution Calculation

Finally, Maldonado brings two challenges to the district court's restitution award. First, he contends that the district court was "limited to the specific transactions listed in Count [One] of the indictment" and therefore could not order restitution to the other victims included in the PSR. Second, he argues that the district court lacked sufficient evidence to conclude that the non-testifying individuals identified in the PSR were victims of criminal conduct. But for the reasons explained below, Maldonado has at least forfeited these objections. Because the district court did not plainly err in entering its restitution order, we affirm it. See United States v. Sansone, 90 F.4th 1, 6 (1st Cir. 2024) ("Unpreserved claims of error, if not deemed waived, are reviewed only for plain error.").

The district court ordered restitution for Maldonado's securities fraud conviction under 18 U.S.C. § 3583(d) as a condition of his supervised release.[14] Section 3583(d) allows a district court to impose as part of a defendant's supervised release sentence "any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate." 18 U.S.C. § 3583(d)(3). Section 3563(b), in turn, permits a court to require the defendant to "make restitution to a victim of the offense ...." Id. § 3563(b)(2); see also United States v. Bok, 156 F.3d 157, 166 (2d Cir. 1998). In this context, a "victim" includes:

> [I]n the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

18 U.S.C. § 3663(a)(2) (emphasis added).[15]

[33] The district court concluded that Maldonado's securities fraud charge, as set forth in the indictment, constituted a "scheme." The court therefore reasoned that, as part of Maldonado's conditions of supervised release, it could order restitution to individuals "directly harmed" by his criminal activity, including those not identified in the indictment.

Although Maldonado now contends that the individuals listed in the PSR but not the indictment were not "victim[s] of the offense" within the meaning of § 3563(b), he failed to properly raise this objection below. Indeed, at Maldonado's sentencing, the district court asked whether there were "[a]ny objection[s] on the terms of supervised release," and defense counsel replied "[n]o."

[34, 35] By failing to object to the terms of his supervised release, Maldonado has forfeited his challenges to the restitution order. See United States v. Walker, 538 F.3d 21, 23 (1st Cir. 2008) (noting that forfeiture occurs when "a party fails to make a timely assertion of a right" (internal quotation marks omitted)). We therefore review Maldonado's forfeited arguments only for plain error.[16] See Sansone, 90 F.4th at 6.

14. As we have explained, the district court ordered restitution under the MVRA (for Maldonado's bank fraud convictions) or, in the alternative, as a condition of supervised release. Because the government has asked us to vacate Maldonado's bank fraud convictions, we consider only whether the district court plainly erred in ordering restitution for Maldonado's securities fraud conviction as a condition of his supervised release.

15. Section 3663, also known as the Victim and Witness Protection Act, sets forth the operative definition of "victim" for restitution orders entered under § 3583(d). See 18 U.S.C. §§ 3563(b)(2), 3556, 3663.

16. Maldonado did not engage with the plain-error standard in his appellate briefs. Typically, we deem a forfeited argument waived when an appellant fails to cite the plain-error standard on appeal. See United States v. Colón-De Jesús, 85 F.4th 15, 25 (1st Cir. 2023). But the government "fail[ed] to request plain error review" on this issue, cutting against waiver. Cf. United States v. Huertas, 148 F.4th 1, 36 (1st Cir. 2025) (deeming the appellant's argument waived because he failed to engage in "any plain error analysis" despite having "the benefit of knowing that the government argued [that such a] standard applie[d]"); United States v. Encarnacion-Ruiz, 787 F.3d 581, 586 (1st Cir. 2015) (applying de novo review because "the government fail[ed] to request plain error review"). Ultimately, because review for plain error lies "within the sound discretion of the court of appeals," we give Maldonado the benefit of that standard in evaluating his challenges to the restitution

[36] To prevail under the plain-error standard, an appellant must show that "(1) the district court committed an error; (2) that error was 'plain -- that is to say, clear or obvious,' (3) the error affected his substantial rights, and (4) leaving the error uncorrected would 'seriously affect[ ] the fairness, integrity or public reputation of judicial proceedings.'" United States v. Langston, 110 F.4th 408, 419 (1st Cir. 2024), cert. denied, ––– U.S. ––––, 145 S. Ct. 581, 220 L.Ed.2d 223 (2024) (quoting United States v. Ortíz-Mercado, 919 F.3d 686, 689 (1st Cir. 2019)). The four prongs may be evaluated in any order. See id.

[37, 38] We start with the second prong, which requires us to decide whether the error -- to the extent there was one -- was "plain." See id. "[A] plain error must be 'indisputable.'" Id. (quoting United States v. Correa-Osorio, 784 F.3d 11, 22 (1st Cir. 2015)). Thus, Maldonado must show that the district court "obviously" exceeded its authority under §§ 3583 and 3563(b) to enter the restitution order at issue here. See id. He can do so by "point[ing] either to binding on-point precedent or show[ing] that [his] theory is compelled by constitutional law, statute, regulation, or other legal mandate." Id. (internal quotation marks omitted).

[39] Maldonado cannot demonstrate clear or obvious error because he has cited neither binding on-point precedent nor compelling authority that would foreclose the district court's ruling. Specifically, he has not pointed to any controlling or compelling authority that would have prohibited the court from determining that the victims identified in the PSR were "person[s] directly harmed" by the scheme charged in the indictment.[17] See 18 U.S.C. § 3663(a)(2).

To challenge the scope of the restitution order, Maldonado principally relies on the Supreme Court's decision in Hughey v. United States, 495 U.S. 411, 110 S.Ct. 1979, 109 L.Ed.2d 408 (1990). But that case does not require a different result. In Hughey, the Supreme Court held that restitution orders entered under § 3663(a), which defines the "victims" eligible for restitution, are limited to "the loss caused by the specific conduct that is the basis of the offense of conviction." Id. at 413, 110 S.Ct. 1979. However, subsequent amendments to § 3663(a) created an exception to Hughey when the crime of conviction includes as an element a scheme, conspiracy, or pattern of criminal activity. See United States v. Acosta, 303 F.3d 78, 87 (1st Cir. 2002) ("Under 18 U.S.C. § 3663(a)(2), any conduct that is in the course of the scheme, conspiracy, or pattern may be considered in calculating restitution."); see also United States v. Batson, 608 F.3d 630, 636-37 (9th Cir. 2010) (noting that Hughey applies "so long as th[e] offense does not involve an element of scheme, conspiracy[,] or pattern of criminal activity" (emphasis added)). At trial, Maldonado himself asserted that "securities fraud is the willful participation in a scheme to defraud." (Emphasis added.) Thus, although we do not resolve today whether 15 U.S.C. §§ 78j(b) and 78ff(a), as a categorical matter, include as an element a "scheme" -- or whether such a categorical interpretation of the statutes is necessary to permit restitution for all "person[s] directly harmed" by securities fraud that amounts to a scheme -- the district court

order. See United States v. Olano, 507 U.S. 725, 732, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993); see also United States v. Leffler, 942 F.3d 1192, 1198 (10th Cir. 2019).

17. There is no doubt that Maldonado's criminal conduct involved a scheme. Indeed, the indictment setting forth the securities fraud charge accuses Maldonado of conducting a "scheme and artifice to defraud."

did not "obviously" err in concluding that the offense of conviction here involved a scheme.[18] See Langston, 110 F.4th at 419. For that reason, its decision to order restitution to victims directly harmed by Maldonado's conduct, but not identified in the indictment, is not obviously wrong.

[40] Further, Maldonado has not cited any authority to suggest that the district court's reliance on the PSR to determine the number of victims constituted "indisputable" error. See id. Indeed, "[a] PSR generally bears 'sufficient indicia of reliability to permit the district court to rely on it at sentencing.'" United States v. Prochner, 417 F.3d 54, 65-66 (1st Cir. 2005) (quoting United States v. Cyr, 337 F.3d 96, 100 (1st Cir. 2003)). As a result, the district court did not plainly err in concluding that the individuals listed in the PSR were, by a preponderance of the evidence, victims of Maldonado's securities fraud crime. See United States v. Vaknin, 112 F.3d 579, 582-83 (1st Cir. 1997). Accordingly, we affirm the restitution order.

III. CONCLUSION

For all these reasons, we **vacate** Maldonado's bank fraud convictions and **affirm** his securities fraud conviction and sentence, including the district court's restitution order.

18. Maldonado asserts that the Supreme Court re-affirmed the Hughey principle in its decision in Paroline v. United States, 572 U.S. 434, 454, 134 S.Ct. 1710, 188 L.Ed.2d 714 (2014). That case, however, involved a restitution order entered pursuant to a different statutory scheme with different governing language and is therefore not on point here. See Langston, 110 F.4th at 419.

MASSACHUSETTS FAIR HOUSING CENTER; Intermountain Fair Housing Council; San Antonio Fair Housing Council, Inc., d/b/a Fair Housing Council of South Texas; Housing Research and Advocacy Center, d/b/a Fair Housing Center for Rights & Research, Inc., on behalf of themselves and all those similarly situated, Plaintiffs, Appellants,

v.

UNITED STATES DEPARTMENT OF HOUSING & URBAN DEVELOPMENT; Scott Turner, in his official capacity as Secretary of Housing and Urban Development; United States DOGE Service; United States DOGE Service Temporary Organization; Amy Gleason, in her official capacity as Acting Administrator of U.S. DOGE Service and U.S. DOGE Service Temporary Organization, Defendants, Appellees.

No. 25-1368

United States Court of Appeals,
First Circuit.

Entered: November 18, 2025

Before Rikelman and Aframe, Circuit Judges, and Elliott,* District Judge.

JUDGMENT

In this case, four fair housing nonprofit organizations ("plaintiffs-appellants") challenge the termination of their grant awards by the U.S. Department of Housing and Urban Development and other

* Of the District of New Hampshire, sitting by designation.

Appendix B

United States Court of Appeals
For the First Circuit

No. 22-1735

UNITED STATES,

Appellee,

v.

CARLOS MALDONADO-VARGAS, a/k/a Carlos Maldonado,

Defendant - Appellant.

Before

Rikelman, Lynch, and Howard,
Circuit Judges.

ORDER OF COURT

Entered: March 10, 2026

Appellant Carlos Maldonado-Vargas's petition for panel rehearing is denied in light of the errata issued on March 10, 2026.

By the Court:

Anastasia Dubrovsky, Clerk

cc:
Joannie Plaza-Martinez, Vivianne Marie Marrero-Torres, Alejandra Ysabel Bird López, Yasmin A. Irizarry-Pietri, Melanie Matos-Cardona, Francisco E. Celedonio, Franco L. Pérez-Redondo, Edwin A. Mora-Rolland, Jessica Ellen Earl, Max J. Pérez-Bouret, Myriam Yvette Fernández-González, Jeanette M. Collazo-Ortiz, Juan Carlos Reyes-Ramos, Marie Christine Amy, Jonathan L. Gottfried, Gregory Bennett Conner, Katherine Twomey Allen

Appendix C

AO 245C (Rev. 09/19) Amended Judgment in a Criminal Case
Sheet 1

(NOTE: Identify Changes with Asterisks (*))

UNITED STATES DISTRICT COURT

District of Puerto Rico

UNITED STATES OF AMERICA
v.
CARLOS MALDONADO-VARGAS
aka Carlos Maldonado

Date of Original Judgment: 9/19/2022
(Or Date of Last Amended Judgment)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 3:16-cr-00661-1 (JAW)
USM Number: 67826-018 *

AFPD Yasmin A. Irizarry
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) One through Sixteen of the Indictment on December 10, 2019. after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
15:78j(b),78ff(a), 18:2	Security Fraud	12/10/2009	1
18:1344(2), 18:2	Bank Fraud	12/10/2009	2-16

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

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

September 12, 2022
Date of Imposition of Judgment

John A. Woodcock, Jr.
Signature of Judge

John Woodcock, United States District Judge
Name and Title of Judge

January 3, 2023
Date

DEFENDANT: CARLOS MALDONADO-VARGAS
CASE NUMBER: 3:16-cr-00661-1 (JAW)

IMPRISONMENT

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

ONE HUNDRED THIRTY-FIVE (135) AS TO ALL COUNTS.

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

- That the defendant be designated to Butner Medical Center or FCC Coleman.

☐ 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 10/19/2022 .

☐ 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: CARLOS MALDONADO-VARGAS
CASE NUMBER: 3:16-cr-00661-1 (JAW)

SUPERVISED RELEASE

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

THREE (3) YEARS AS TO COUNT ONE AND FIVE (5) YEARS AS TO COUNTS 2 TO 16.

MANDATORY CONDITIONS

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

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

DEFENDANT: CARLOS MALDONADO-VARGAS
CASE NUMBER: 3:16-cr-00661-1 (JAW)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature ______________________ Date ______________

DEFENDANT: CARLOS MALDONADO-VARGAS
CASE NUMBER: 3:16-cr-00661-1 (JAW)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not commit another Federal, state, or local crime, and shall observe the standard conditions of supervised release recommended by the United States Sentencing Commission and adopted by this Court.

2. The defendant shall not unlawfully possess controlled substances.

3. The defendant shall refrain from possessing firearms, destructive devices, and other dangerous weapons.

4. The defendant is to pay any restitution or fine at a rate of not less than $50 per month. The offender will also apply 50% percent of any annual federal and/or state income tax refund toward payment of the restitution and/or fine. The offender will not change exemptions claimed for either federal or state income tax purposes without prior notice to the supervising probation officer.

5. The defendant shall provide access to all financial information requested by the supervising probation officer including, but not limited to, copies of all federal and state income tax returns.

6. The defendant will maintain one personal checking account. All of the offender's income, monetary gains, or other pecuniary proceeds will be deposited into this account, which will also be used for payment of all personal expenses. Records of all other bank accounts, including business accounts, will be disclosed to the supervising probation officer upon request.

7. The defendant will not hold employment having fiduciary responsibilities during the supervision term without first notifying the employer of the conviction. The offender will not hold self-employment having fiduciary responsibilities without approval of the supervising probation officer.

8. The defendant will cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self- employment, the offender will provide the U.S. Probation Office with full disclosure of self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self-Employment Records), or as otherwise requested by the U.S. Probation Office.

9. The Court shall order restitution for any offense of conviction in accordance with section 3663A following procedures and enforcement as mandated pursuant to section 3664. Restitution is ordered to be paid to the victims. Restitution payments are to be made directly to the U.S. Clerk of Court, District of Puerto Rico for transfer to the victims.

10. The defendant shall cooperate in the collection of a DNA sample as directed by the Probation Officer, pursuant to the Revised DNA Collection Requirements, and Title 18, U.S. Code Section 3563(a)(9).

11. The defendant shall submit his person, property, house, vehicle, papers, computers (as defined in 18 U.S.C. Section 1030(e)(1)), other electronic communication or data storage devices, and media, to a search conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

AO 245C (Rev. 09/19) Amended Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

(NOTE: Identify Changes with Asterisks (*))

DEFENDANT: CARLOS MALDONADO-VARGAS
CASE NUMBER: 3:16-cr-00661-1 (JAW)

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 1,600.00	$ 1,986,734.26	$ 0.00	$ 0.00	$ 0.00

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

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

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

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 1,986,734.26	

☐ Restitution amount ordered pursuant to plea agreement $ __________

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

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

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

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Appendix C

DEFENDANT: CARLOS MALDONADO-VARGAS
CASE NUMBER: 3:16-cr-00661-1 (JAW)

SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $ 1,988,334.26 due immediately, balance due

☐ not later than ____________________ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal __________ (e.g., weekly, monthly, quarterly) installments of $ __________ over a period of __________ (e.g., months or years), to commence __________ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal __________ (e.g., weekly, monthly, quarterly) installments of $ __________ over a period of __________ (e.g., months or years), to commence __________ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within __________ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

Restitution payments are to be made directly to the U.S. Clerk of Court, District of Puerto Rico for transfer to the victims.

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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