No. 26-________

IN THE

Supreme Court of the United States

YESID AVILA-DIAZ,
***Petitioner*,**

v.

UNITED STATES OF AMERICA,
***Respondent*.**

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

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APPENDIX

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Counsel of Record for Petitioner

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NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-12380
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YESID AVILA DIAZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:17-cr-20887-KMM-4

Before JORDAN, KIDD, and ANDERSON, Circuit Judges.

PER CURIAM:

The Government's motion to dismiss this appeal as barred by Appellant's guilty plea and sentence appeal waiver is GRANTED. *See United States v. Bushert*, 997 F.2d 1343, 1350-51

(11th Cir. 1993) (sentence appeal waiver will be enforced if it was made knowingly and voluntarily); *United States v. Grinard-Henry*, 399 F.3d 1294, 1296 (11th Cir. 2005) (waiver of the right to appeal includes waiver of the right to appeal difficult or debatable legal issues or even blatant error); *United States v. Sanfilippo*, 91 F.4th 1380, 1383 (11th Cir. 2024) (statute of limitations defense is a non-jurisdictional defect because it must be asserted by a defendant at trial); *United States v. Helmich*, 704 F.2d 547, 548 (11th Cir. 1983) (defendant who pleads guilty can challenge their prosecution as time barred only insofar as the indictment on its face shows that the limitations period expired).

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

March 12, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-12380-BB
Case Style: USA v. Yesid Diaz
District Court Docket No: 1:17-cr-20887-KMM-4

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing.

Costs
No costs are taxed.

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

<u>Clerk's Office Phone Numbers</u>

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

May 05, 2026

Clerk - Southern District of Florida
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 25-12380-BB
Case Style: USA v. Yesid Diaz
District Court Docket No: 1:17-cr-20887-KMM-4

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

<u>Clerk's Office Phone Numbers</u>

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

MDT-1 Letter Issuing Mandate

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-12380

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YESID AVILA DIAZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:17-cr-20887-KMM-4

JUDGMENT

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

Entered: March 12, 2026

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

ISSUED AS MANDATE: May 5, 2026

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 24, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-12380-BB
Case Style: USA v. Yesid Diaz
District Court Docket No: 1:17-cr-20887-KMM-4

The enclosed order has been entered on petition for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-12380

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YESID AVILA DIAZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:17-cr-20887-KMM-4

Before JORDAN, KIDD and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Yesid Avila Diaz is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 25-12380-BB
L.T. CASE NO. 1:21-cr-20303-DPG

YESID AVILA-DIAZ,
Defendant/Appellant,
v.
UNITED STATES OF AMERICA,
Plaintiff/Appellee.

Appeal from the United States District Court
for the Southern District of Florida

APPELLANT YESID AVILA-DIAZ
PETITION FOR PANEL REHEARING

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THIS CASE IS ENTITLED TO PREFERENCE
(CRIMINAL APPEAL)

Yesid Avila-Diaz v. United States of America
Case No. 25-12380-BB

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT PURSUANT TO FRAP 26.1 AND 11TH CIR. R. 26.1-1

Appellant Yesid Avila-Diaz, by and through undersigned court-appointed counsel, and pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Local Rule 26.1-1, hereby certifies that the following additional persons or entities may have an interest in the outcome of this case.

Blair, Elizabeth

Caruso, Michael

Coakley, Brianna

D'Angelo, Hon. Ellen F.

Davis, Michael S.

Delgado, Jorge R.

Diaz, Yesid Avila

Grove, Daren

Hermida, Ricardo P.

Louis, Hon. Lauren Fleischer

Mariani, Nicole

Yesid Avila-Diaz v. United States of America
Case No. 25-12380-BB

Certificate of Interested Persons (cont'd)

Matzkin, Daniel

McAliley, Hon. Chris M.

Moore, Hon. K. Michael

O'Donnell Christopher LLP

O'Donnell, Robert A.

O'Donnell, Sonia E.

Otazo-Reyes, Hon. Alicia M.

Reding Quinones, Jason A.

Rodriguez-Schack, Yvonne

Sanchez, Hon. Eduardo I.

Schuster, Joseph M.

Smachetti, Emily M.

Tomanelli, Audrey Pence

Torres, Hon. Edwin G.

Vigilance, Michele S.

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ISSUES MERITING REHEARING REVIEW

Pursuant to Federal Rule of Appellate Procedure 40(a)(2), Appellant identifies the following points of law that the panel overlooked or misapprehended in granting the government's motion to dismiss:

1. The panel applied the facial-deficiency inquiry under *United States v. Helmich*, 704 F.2d 547, 548 (11th Cir. 1983) to the Second Superseding Indictment in isolation. The Second Superseding Indictment cannot relate back to the timely Superseding Indictment because it materially broadened the original charge. That claim requires comparing the successive indictments, and the defect is apparent on the face of the charging record when they are read together. The panel did not undertake that comparison.

2. The panel did not address whether the Second Superseding Indictment satisfies the relate-back requirements of *United States v. Italiano*, 894 F.2d 1280, 1282 (11th Cir. 1990) and *United States v. Ratcliff*, 245 F.3d 1246, 1253 (11th Cir. 2001), which hold that a superseding indictment filed after the limitations period has expired cannot relate back if it materially broadens or substantially amends the original charges. The Superseding Indictment charged a conspiracy lasting roughly three months; the Second Superseding Indictment expanded that charge to nearly six years, added new defendants, and alleged new conduct. The panel's order contains no analysis of this expansion under *Italiano* or *Ratcliff*.

3. The panel cited *Helmich* as foreclosing Appellant's claim. *Helmich* involved a single indictment in which no relation-back question was presented; the Court found no facial time-bar because the conspiracy was alleged to have continued into the limitations period. 704 F.2d at 548. Here, the claim is that the Second Superseding Indictment obtained its alleged end-date by materially broadening the timely Superseding Indictment. *Helmich* directs the court to the face of the charging record; it does not foreclose the comparative inquiry that the relation-back doctrine requires.

ARGUMENTS SUPPORTING REHEARING

INTRODUCTION

In 2017, a federal grand jury in the Southern District of Florida charged Santiago Alirio Gomez Rivera with conspiring to distribute cocaine, knowing and intending that it would be unlawfully imported into the United States, in violation of 21 U.S.C. §§ 959 and 963. The original indictment alleged a conspiracy lasting from March 1 through May 20, 2013. (DE:3).

In April 2018, the grand jury returned a Superseding Indictment that added codefendants, including Appellant Yesid Avila Diaz, to the charge against Rivera. The conspiracy period remained substantially the same: March through May 2013. (DE:7). That indictment was filed within the five-year statute of limitations.

Three months later, in July 2018, the grand jury returned a Second Superseding Indictment. The codefendants and the statutory charge remained the same, but the alleged conspiracy period was expanded to run from January 2008 through September 2013. (DE:11). The Second Superseding Indictment also contained no overt acts and no individualized allegations of when any defendant joined or withdrew from the conspiracy. By the time it was returned, the three-month conspiracy period alleged in the Superseding Indictment, ending in May 2013, had fallen outside the five-year limitations window.

Appellant was extradited from Colombia in November 2024 and pleaded guilty under an unconditional plea agreement on March 6, 2025. (DE:241; DE:243). He was sentenced to 108 months of imprisonment, the low end of his guidelines range. (DE:280).

On appeal, the government moved to dismiss before merits briefing, arguing that Appellant's unconditional guilty plea waived his statute-of-limitations challenge. The panel granted the motion in a per curiam order dated March 12, 2026, citing *United States v. Helmich*, 704 F.2d 547, 548 (11th Cir. 1983) for the proposition that a defendant who pleads guilty may challenge his prosecution as time-barred "only insofar as the indictment on its face shows that the limitations period expired." The panel concluded that the Second Superseding Indictment does not make that showing.

This petition contends that the panel applied *Helmich* to the wrong unit of analysis. Appellant's claim is not that the Second Superseding Indictment, read in isolation, discloses a time-bar on its face. It is that the Second Superseding Indictment cannot relate back to the timely Superseding Indictment because it materially broadened the original charge, expanding a three-month conspiracy to nearly six years. That determination requires comparing the successive indictments, both of which are part of the record before this Court. When they are read together, the broadening that renders the Second Superseding Indictment time-barred under *United States v. Italiano*, 894 F.2d 1280 (11th Cir. 1990) and *United States v. Ratcliff*, 245 F.3d 1246 (11th Cir. 2001) is apparent on the face of the charging record.

The panel treated the inquiry as confined to the Second Superseding Indictment alone. But the defect inheres in the relationship between successive indictments – namely, a timely Superseding Indictment charging a three-month conspiracy and an untimely Second Superseding Indictment expanding that charge to nearly six years with new defendants and new conduct. The panel should have considered the relationship between the timely and untimely indictments, and so applied the wrong unit of analysis. Had the panel considered the relationship among the various indictments, it would have seen that the change from the original, timely indictments to the ultimate indictment renders that Second

Superseding Indictment time-barred under *Italiano* and *Ratcliff*; it would be apparent on the face of the charging record when the successive instruments are read together. The panel's contrary conclusion warrants rehearing.

ARGUMENTS SUPPORTING REHEARING

I. THE PANEL APPLIED THE WRONG UNIT OF ANALYSIS IN EVALUATING THE STATUTE-OF-LIMITATIONS CLAIM

A statute-of-limitations defense, properly raised, challenges the government's authority to prosecute. A guilty plea does not waive a limitations defense when the charging instrument itself demonstrates that the charges are time-barred. *Helmich*, 704 F.2d at 548.

The panel concluded that the Second Superseding Indictment does not reveal a time-bar on its face, because it alleges a conspiracy extending through September 2013 and was filed within five years of that date. Read in isolation, the Second Superseding Indictment does not disclose the defect. But Appellant's claim does not rest on the Second Superseding Indictment read in isolation. The claim is that the Second Superseding Indictment cannot relate back to the timely

Superseding Indictment because it materially broadened the original charge. That determination requires comparing the two instruments.

Both indictments are part of the record before this Court. The Superseding Indictment, filed within the limitations period, charged a conspiracy spanning roughly three months: March through May 2013. (DE:7). The Second Superseding Indictment, filed three months later in July 2018, charged a conspiracy beginning in January 2008 and continuing until September 2013, added defendants not previously named, and alleged conduct not previously charged. (DE:11). Where, as here, the defect inheres in the relationship between successive charging instruments, the face of the charging record includes both. The broadening is visible on that record without resort to extrinsic evidence.

The panel erred in confining its analysis to a facial inquiry of the later instrument alone, treating the Second Superseding Indictment as though it existed independently of the indictment it purported to supersede. That framing assumes the answer to the question the claim poses: whether the Second Superseding Indictment validly relates back. By declining to compare the instruments, the panel foreclosed the very analysis that *Italiano* and *Ratcliff* require.

II. THE SECOND SUPERSEDING INDICTMENT MATERIALLY BROADENED THE TIMELY SUPERSEDING INDICTMENT AND CANNOT RELATE BACK

A superseding indictment filed after the statute of limitations has expired is valid only if the original indictment was timely, remains pending, and the superseding indictment "does not broaden or substantially amend the original charges." *Italiano*, 894 F.2d at 1282. When a superseding indictment materially broadens a timely indictment, it does not relate back, and the later charges are time-barred. *Ratcliff*, 245 F.3d at 1253.

In *Ratcliff*, this Court held the relate-back doctrine inapplicable where "the differences in scope between the two sets of conspiracy charges [were] dramatic", as the superseding indictment had expanded the conspiracy's duration by years. 245 F.3d at 1253. The Court rejected the government's contention that the later indictment merely clarified or corrected the earlier one.

The case at bar is much the same. The Superseding Indictment in the present case charged a discrete conspiracy lasting roughly three months. The Second Superseding Indictment transformed that charge into one spanning nearly six years, from January 2008 through September 2013, and added defendants and conduct that the timely indictment never alleged. This was not a clarification or correction of the original charge within the meaning of *Ratcliff*. The Second Superseding Indictment altered the factual core of the charge by reaching backward more than five years to allege conduct and participants far outside the scope of the original prosecution. Under *Italiano* and *Ratcliff*, that expansion cannot relate back.

The magnitude of the broadening is compounded by the character of the indictment itself. The Second Superseding Indictment charged a single § 963 conspiracy containing no overt acts and no individualized allegations of when any defendant joined or withdrew. (DE:11 at 1) It left unspecified what conduct the government relied on to satisfy the limitations period. The Superseding Indictment, by contrast, at least confined the conspiracy to a discrete and identifiable period. The Second Superseding Indictment erased that specificity while adding years of uncharged conduct, making the broadening visible on the face of the successive instruments and reinforcing the conclusion that the later indictment cannot be treated as a continuation of the timely charge.

The panel cited *Helmich* for the proposition that a defendant who pleads guilty may challenge his prosecution as time-barred only insofar as the indictment on its face shows that the limitations period expired. *Helmich* supports Appellant's position, not the panel's conclusion. In *Helmich*, the Court examined the indictment and found no facial time-bar because the conspiracy, despite beginning nearly twenty years earlier, was alleged to have continued through a date within the limitations period. 704 F.2d at 548. There was no claim that a later indictment had expanded an earlier one. Here, by contrast, the claim is that the Second Superseding Indictment obtained its alleged end-date by materially broadening the timely Superseding Indictment. *Helmich* directs the court to the face of the charging record; it does not instruct the court to ignore the relation-back question that determines whether the charging instrument is valid in the first place.

CONCLUSION

The panel confined its inquiry to the Second Superseding Indictment in isolation, thereby declining to apply the comparative analysis that *Italiano* and *Ratcliff* require. When the successive indictments are read together, the material broadening of the timely charge is apparent on the face of the indictments. Appellant respectfully requests that this Court grant rehearing and permit full briefing on the merits of his statute-of-limitations defense.

Dated: March 31, 2026.

Respectfully submitted,

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/s/ Sonia E. O'Donnell
SONIA E. O'DONNELL
Florida Bar No. 250643

/s/ Robert A. O'Donnell
ROBERT A. O'DONNELL
Florida Bar No. 1011567

CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies that this petition complies with the type-volume limitations of Fed. R. App. P. 40(b)(1) and Eleventh Circuit Rule 28-1 because, excluding the parts of the petition exempted by Fed. R. App. P. 32(f), this petition contains 1694 words.

The undersigned attorney further certifies that this petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Office 365 in Bookman Old Style 14 point font.

By: */s/ Sonia Escobio O'Donnell*
Sonia Escobio O'Donnell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 31, 2026, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF system which will serve a copy on:

Chief, Appellate Division
U.S. Attorney's Office
99 N.E. 4th Street, Ste. 500
Miami, FL 33132

By: */s/ Sonia Escobio O'Donnell*
Sonia Escobio O'Donnell

CASE NO. 25-12380-B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

YESID AVILA DIAZ,
Defendant/Appellant,

v.

UNITED STATES OF AMERICA,
Plaintiff/Appellee.

Appeal from the United States District Court
for the Southern District of Florida
Case No. 1:21-cr-20303-DPG

APPELLANT YESID AVILA DIAZ'S OPENING BRIEF

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/s/ Robert A. O'Donnell
ROBERT A. O'DONNELL
Florida Bar No. 1011567

THIS CASE IS ENTITLED TO PREFERENCE
(CRIMINAL APPEAL)

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT PURSUANT TO FRAP 26.1 AND 11TH CIR. R. 26.1-1

Appellant, Federal Rule of Appellate Procedure 26.1 and 11th Cir. R. 26.1-1, undersigned court-appointed counsel for the Appellant Yesid Avila Diaz certifies that the following persons or entities may have an interest in the outcome of this case.

Coakley, Brianna

D'Angelo, Hon. Ellen F.

Diaz, Yesid Avila

Grove, Daren

Hermida, Ricardo P.

Louis, Hon. Lauren Fleischer

Matzkin, Daniel

McAliley, Hon. Chris M.

Moore, Hon. K. Michael

O'Donnell Christopher LLP

O'Donnell, Robert A.

O'Donnell, Sonia E.

Otazo-Reyes, Hon. Alicia M.

Yesid Avila Diaz v. United States
Case No. 25-12380-B

Certificate of Interested Persons (cont'd)

Rodriguez-Schack, Yvonne

Sanchez, Hon. Eduardo I.

Schuster, Joseph M.

Tomanelli, Audrey Pence

Torres, Hon. Edwin G.

Vigilance, Michele S.

STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests oral argument. The appeal raises two issues that warrant consideration by the court: (1) whether the Second Superseding Indictment materially broadened and substantially amended the indictment in a way that rendered the prosecution time-barred, and (2) whether the district court should have considered resentencing under Amendment 821's zero-point offender provision. Both issues involve the interaction of procedural history, statutory limitations, and controlling Eleventh Circuit precedent. Oral argument will assist the Court by allowing focused discussion of the record, including the sequence of indictments, the denial of a bill of particulars, and the consequences that flowed from those rulings

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which give the courts of appeals jurisdiction over the final judgment of the United States District Court. The notice of appeal was timely filed on July 11, 2025 (Doc. 268), from the final judgment and sentence entered on May 9, 2025 (Doc. 255).

STATEMENT OF THE ISSUES

Whether the Second Superseding Indictment was time-barred because it materially broadened and substantially amended the Superseding Indictment by expanding the charged conspiracy from a three-month period in 2013 to a six-year period beginning in 2008, adding defendants, and introducing new conduct outside the statute of limitations.

Whether the district court's denial of a bill of particulars prevented meaningful judicial review of the statute-of-limitations defect by allowing the government to maintain an indictment whose breadth could not be tested against the five-year limitations period.

Whether remand for resentencing is warranted under Amendment 821 because Mr. Diaz qualifies as a zero-point offender and the amendment now applies retroactively to defendants serving terms of imprisonment.

STATEMENT OF THE CASE

Course of Proceedings and Disposition in the Court Below

This prosecution began with an indictment filed on December 14, 2017 (Doc. 3), charging Santiago Alirio Gomez Rivera with a single count of conspiracy to distribute five kilograms or more of cocaine, knowing and intending the cocaine would be imported into the United States, in violation of 21 U.S.C. §§ 959, 963. The indictment alleged that the conspiracy occurred "from March 1 to May 20, 2013, in the countries of Colombia, Honduras, and elsewhere" (Doc. 78, Page 1–2).

On April 17, 2018, the government filed a Superseding Indictment (Doc. 7) adding four defendants—Carlos Enrique Cuadros Sayas, Carlos Julio Tobon Bernal, Appellant Yesid Avila Diaz, and Rafael Segundo Castro Diaz—and averred the alleged conspiracy went through "May 2013" (Doc. 78, Page 2).

A Second Superseding Indictment (Doc. 11) followed on July 19, 2018, adding a sixth defendant, Juan Diego Restrepo Cadavid, and expanding the alleged conspiracy period from January 2008 through September 2013, while retaining the single count of conspiracy under 21 U.S.C. § 963 (Doc. 78, Page 3).

Defendant Castro Diaz moved to dismiss the Second Superseding Indictment for violation of the five-year statute of limitations (Doc. 40). The motion argued that the indictment arose from the April 18, 2013, interdiction of the vessel *Manatee* and that the conspiracy terminated on that date (Doc. 40, Page 1–3; Doc. 42). On November 15, 2022, Magistrate Judge McAliley held a hearing and later issued a Report and Recommendation denying all dismissal motions (Doc. 78). The R&R concluded that because each indictment alleged a conspiracy continuing into the five-year limitations period, all were timely under 18 U.S.C. § 3282 and Eleventh Circuit precedent (Doc. 78, Page 4–6).

Castro Diaz filed Objections to the R&R on December 1, 2022 (Doc. 87), challenging the Magistrate's interpretation of the limitations period and invoking *United States v. Ratcliff*, 245 F.3d 1246 (11th Cir. 2001) (Doc. 87, Page 5–7). Judge Moore subsequently adopted the R&R and denied dismissal.

Separately, defendants sought a Bill of Particulars (Doc. 79), which the Court denied (Doc. 95).

Defendant Yesid Avila Diaz remained a fugitive until his arrest in Colombia on July 24, 2023, and extradition to the United States on October 31, 2024 (Final PSI, Page 2). He thereafter entered into a Plea Agreement (Doc. 241) on March 6, 2025, pleading guilty to the single count of the Second Superseding Indictment (Doc. 241, Page 1–2). A Change-of-Plea hearing was conducted before the Magistrate Judge, followed by a Report and Recommendation (Doc. 243) recommending acceptance of the plea.

Mr. Avila Diaz filed Objections to the Presentence Investigation Report (Doc. 247) and a Sentencing Memorandum (Doc. 249). He was sentenced on May 15, 2025 (Doc. 255), after the Court considered his request for a variance and his “safety-valve” proffer under 18 U.S.C. § 3553(f) (Doc. 249, Page 1–2).

According to the Presentence Investigation Report and the Factual Proffer, the offense arose from an April 18, 2013, interdiction of the fishing vessel *Manatee* approximately 115 nautical miles northeast of Colón, Panama. The *Manatee* flew a United States flag and carried 1,200 kilograms of cocaine concealed in 43 bales (Final PSI, Page 8–9). The U.S. Coast Guard boarded the vessel, identified the master as Beat Jegge (a Swiss national) and two crewmen—Daniel Velasquez Agudelo and Claro Julio Alvarez, both Colombian nationals—and seized the substance, which tested positive for cocaine hydrochloride (Final PSI, Page 8–9).

The investigation revealed that the *Manatee* had departed Colombia on April 17, 2013, loaded with cocaine, supplied by a Colombian drug-trafficking organization ("DTO") operating along the country's north coast. The DTO used sailboats and fishing vessels to ship multi-ton quantities of cocaine from Colombia to Central America, where the loads were to be transported onward to the United States (Final PSI, Page 8–9 ¶ 14–15).

Confidential informants and wire intercepts linked Yesid Avila Diaz and his co-defendants to this organization. Avila Diaz's role was to load, transport, and transfer the cocaine bales from a "stash house" in Colombia to the harbor and ultimately onto the *Manatee* (Doc. 249, Page 2). After the Coast Guard interdicted the *Manatee*, U.S. agents traced the cocaine shipment back to those responsible for its loading and maritime dispatch (Doc. 78, Page 5, citing Detention Hearing Order Doc. 27 at 3).

Appellant Avila-Diaz is presently incarcerated.

STANDARD OF REVIEW

A district court ruling concerning the statute of limitations applicable in the case is subject to de novo review. *Harrison v. Digital Health Plan*, 183 F.3d 1235 (11th Cir. 1999) ("the district court's interpretation and application of a statute of limitations is a question of law that this Court may review de novo").

This Court also reviews a district court for abuse of its discretion concerning whether it applied the wrong legal standard, failed to follow proper procedures, or made a clear error of judgment. *United States v. Garcia*, 724 Fed. Appx. 868 (2018).

The Court reviews sentencing errors for procedural and substantive reasonableness under an abuse of discretion standard. *United States v. Villareal*, 613 F.3d 1344, 1357 (11th Cir. 2010).

SUMMARY OF THE ARGUMENT

The government transformed a timely-charged three-month conspiracy into an untimely six-year operation by filing the Second Superseding Indictment after the statute of limitations expired. Appellant Diaz was convicted under this time-barred indictment. His conviction must be vacated.

The controlling legal standard is whether the superseding indictment rests on approximately the same facts as the timely indictment. Here, it does not. The Superseding Indictment, filed within the five-year limitations period, alleged a conspiracy lasting from approximately May 20 to May 31, 2013. The Second Superseding Indictment, filed after the statute had run, alleged that the same conspiracy began in January 2008 and continued until September 2013. It also added defendants and overt acts never charged in the Superseding Indictment. When the later indictment introduces years of new conduct and additional defendants, it materially broadens the charges.

This Circuit has held that a superseding indictment materially broadens the charges where it expands the conspiracy's duration by years and introduces conduct and participants outside the scope of the original indictment. The government will argue that continuity of object, or overlapping participants, saves the indictment. That argument fails as a matter of law. By reaching back more than five years earlier than the Superseding Indictment, the government filed a new and untimely prosecution.

A superseding indictment may extend the charged time frame forward within conduct still covered by the limitations period. It may not reach back to encompass conduct outside the statute of limitations. This distinction matters because a prosecutor who expands the scope of conduct charged back in time resurrects time-barred conduct the defendant could no longer be prosecuted for independently. The government did just that in the present case. The Second Superseding Indictment expanded the conspiracy backward by years to include conduct that was already time-barred. The law requires dismissal when a superseding indictment materially broadens the charges after the statute has expired.

The district court's denial of a bill of particulars requested by co-defendants compounded the limitations problem. The motion sought to force the government to specify when each defendant joined the conspiracy and what acts each committed. Had the government been required to particularize those facts, the statute-of-limitations question could have been resolved on a definite record. The denial allowed the government to maintain vagueness by alleging a conspiracy stretching back to 2008 while preserving the argument that the relevant conduct fell within the limitations period. This tactical vagueness hindered Appellant Diaz from challenging the specific conduct alleged against him as time barred. The government exploited both advantages: a sweeping indictment on paper and the flexibility to narrow its theory as needed. By keeping the indictment vague, the government avoided having to choose between charging only timely conduct or facing dismissal for reaching back beyond the limitations period.

Accepting the government's position would effectively nullify the statute of limitations in conspiracy cases. Appellant Diaz entered a guilty plea under this defective indictment. A guilty plea does not waive a statute-of-limitations defense when the indictment itself is time-barred. The conviction must be vacated.

ARGUMENT

I. THE SUPERSEDING INDICTMENT WAS BARRED BY THE STATUTE OF LIMITATIONS BECAUSE IT MATERIALLY BROADENED AND SUBSTANTIALLY AMENDED THE TIMELY INDICTMENT

A superseding indictment filed after the statute of limitations has expired is valid only if the original indictment was timely, remains pending, and the superseding indictment "does not broaden or substantially amend the original charges." *United States v. Italiano*, 894 F.2d 1280, 1282 (11th Cir. 1990). This Circuit reaffirmed that rule in *United States v. Ratcliff*, 245 F.3d 1246, 1253-1254 (11th Cir. 2001), holding that when a superseding indictment materially broadens or substantially amends a timely indictment, it does not relate back, and the charges are time-barred.

The Government filed its first Superseding Indictment within the five-year statute of limitations. It alleged a conspiracy beginning on or about May 20, 2013, and continuing until the end of May 2013. The later Second Superseding Indictment, filed after the statute had run, alleged that the same conspiracy began in January 2008 and continued until September 2013. The Second Superseding

Indictment also added defendants and overt acts never charged before. This six-year expansionally broadened the original charges and cannot relate back under *Italiano* and *Ratcliff*.

In *Ratcliff*, this Circuit found that a superseding indictment materially broadened the charges where "the differences in scope between the two sets of conspiracy charges are dramatic" and "the change in the time period of the alleged conspiracy expanded the length … by at least twelve years." 245 F.3d at 1253-54. The Court rejected the Government's argument that the superseding indictment merely clarified or corrected the earlier one, concluding that "the conspiracies for which Ratcliff was convicted had a much broader scope than did the charges in the initial indictment."

The same principle governs in the case at bar. The Second Superseding Indictment against Appellant Diaz converted a short, discrete conspiracy, one spanning roughly three months, into one alleged to have persisted for nearly six years. This change not only broadened the temporal scope but transformed the factual core of the offense. By alleging conduct and participants far outside the period charged in the Superseding Indictment, the Government effectively created a new conspiracy. Under *Italiano* and *Ratcliff*, the Second

Superseding Indictment cannot be treated as a continuation of the timely indictment; it was a new and untimely prosecution.

The Government may argue that both indictments alleged the same object or involved overlapping participants. But *Ratcliff* rejected that argument, holding that *"continuity of object or participants … while relevant, is not determinative."* 245 F.3d at 1254. The trial court must assess whether the superseding indictment rests on approximately the same facts; when, as here, the later indictment introduces years of new conduct and additional defendants, it does not.

The Government cannot rely on discovery or pretrial disclosures made after the limitations period expired to argue that the defendants were on notice of the broader charges. This Court has stated that "pre-trial discovery conducted after the limitations period has run does not affect the statute-of-limitations analysis." *Ratcliff*, 245 F.3d at 1255. Instead, an indictment (as well as a superseding indictment) must itself give timely notice of the charges within the limitations period.

The Second Superseding Indictment against Mr. Diaz failed to give such notice. Once the Government expands the scope of its charges, the new indictment ceases to toll the time horizon for the statute of limitations concerning a given defendant: *Ratcliff* held that where the Government "greatly broadened the charges," "there was no tolling," and the counts must be dismissed. 245 F.3d at 1255.

In the present case, the Second Superseding Indictment against Mr. Diaz broadened the duration of the government's charged conspiracy against him; the government augmented the original scope of the charged conspiracy (one that lasted a matter of months) to a conspiracy extending several years, one with new defendants and new conduct. The government cannot rely on the timely first Superseding Indictment to toll the statute of limitations for the untimely second.

The Report and Recommendation by the magistrate relied on *United States v. Butler*, 792 F.2d 1528, 1532 (11th Cir. 1986) for the proposition that a conspiracy that continues into the five-year period remains timely even without an overt act. But *Butler* addressed when a conspiracy ends for limitations purposes, and not whether a later indictment may expand an earlier one. *Italiano* and *Ratcliff* directly control the latter question and make clear that the inquiry is whether the superseding indictment broadened or substantially amended the timely indictment. Because the Second Superseding Indictment did both, *Butler* cannot save it.

Appellant also believes that *Butler* was wrongly decided and preserves his objection for further review. The statute of limitations protecting a particular defendant cannot be extended indefinitely when the government is unable to show that the defendant committed any overt acts in furtherance of a conspiracy such that those acts might broaden the statute of limitations. Even if the Court were to hold that the Second Superseding Indictment's expansion did not violate *Italiano* and *Ratcliff*, the indefinite duration of non-overt-act conspiracies presents serious due-process concerns. Treating such conspiracies as continuing indefinitely, without the anchor of an overt act, risks a prosecution that "may never end," creating impermissible vagueness. As the Supreme Court held in *United States v. Davis*, 139 S. Ct. 2319, 2323 (2019), "in our constitutional order, a vague law is no law at all." Allowing the government to allege an open-ended conspiracy that stretches backward indefinitely would render the limitations period meaningless.

In *United States v. Lopez-Giraldo*, 2021 WL 351985 (N.D. Ga. Feb. 2, 2021), the court upheld a superseding indictment that extended the time frame of a conspiracy forward—but only within conduct still covered by the five-year limitations period. The court emphasized that the superseding indictment did not "go back in time and encompass conduct well outside the statute of limitations." *Id.* at *3. Yet the superseding indictment in *Lopez-Giraldo* merely expanded the charged period into a timeframe that remained within the statute of limitations and added no new defendants or overt acts from an earlier, time-barred period. Because the conduct added by the superseding indictment still fell inside the limitations window, tolling under *Italiano* remained intact.

Here, contrary to *Lopez-Giraldo*, the government's first Superseding Indictment alleged a conspiracy lasting from about May 20 to May 31, 2013, while its second, filed after the statute had expired, alleged a conspiracy beginning in January 2008 and ending in September 2013 – new allegations that added new alleged defendants and new alleged acts reaching back years earlier than did the first Superseding Indictment.

The Second Superseding Indictment was filed after the statute of limitations expired and materially broadened the timely first Superseding Indictment by extending the conspiracy period from roughly three months to nearly six years and adding defendants and conduct not charged before. Under *Italiano* and *Ratcliff*, such a superseding indictment cannot relate back and is time-barred.

A. The District Court's Denial of a Bill of Particulars Enabled the Government to Evade the Statute of Limitations and Coerced a Guilty Plea to Time-Barred Charges

Defendants in Mr. Diaz's case moved under Rule 7(f) for a bill of particulars requesting that the Government specify the manner in which each defendant knowingly, willfully, and intentionally conspired; the names of all unindicted co-conspirators; the date and manner of each defendant's entry into the conspiracy; any acts occurring within the United States; and the facts by which the Government would contend that each defendant knew or intended that the cocaine would be imported into the United States. (Doc. 79 at 3.)

On November 17, 2022, the district court denied the motion. The order reasoned that the Second Superseding Indictment tracked the statutory language, that substantial discovery had been provided, and that Circuit precedent disfavored using a bill of particulars to obtain "the whens, wheres, and with whoms of the acts in question" or "the names of unindicted co-conspirators." (Doc. 95 at 2-3 (citing *United States v. Rosenthal*, 793 F.2d 1214 (11th Cir. 1986); *United States v. Cole*, 755 F.2d 748 (11th Cir. 1985)). Yet denying defendants' request for a bill of particulars in this case allowed the government to obscure the temporal boundaries of the alleged conspiracy and thereby evade the statute-of-limitations bar that should have ended this prosecution. Although Mr. Diaz did not join the motion for a bill of particulars because he was not arrested and brought to trial until years after these requests were made, its denial is still instructive: Appellant Diaz ultimately entered a guilty plea on charges that were time-barred from the outset.

A district court's ruling on a bill of particulars is reviewed for abuse of discretion. *Cole*, 755 F.2d at 760, explains that a bill exists "to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense, to minimize surprise at trial, and to enable him to plead double jeopardy." Here, the particulars were sought not merely for trial preparation but to test whether the charges were timely brought at all.

The Second Superseding Indictment charged a single § 963 conspiracy "beginning in or around January 2008 and continuing until in or around September 2013, in the countries of Colombia, Honduras and elsewhere." (Doc. 11 at 1.) It contained no overt acts and no individualized allegations of when or how any defendant joined or withdrew. The objections to the magistrate's Report and Recommendation made clear that the expanding indictments raised both notice and limitations problems. The first indictment covered March 1–May 20, 2013; the superseding indictment expanded that to "March 2013–May 2013"; and the Second Superseding Indictment broadened it to January 2008–September 2013. (Doc. 87 at 2-3.) The objections argued that the Second Superseding Indictment "materially broadened and substantially amended" the prior charge, requiring dismissal under *United States v. Ratcliff*, 245 F.3d 1246, 1256 (11th Cir. 2001), and that the lack of defined overt acts or individualized participation dates left defendants without notice of which conduct, if any, fell inside the five-year period. (Doc. 87 at 4-6.)

The motion for a bill of particulars sought to force the Government to commit to specific dates and acts. Had the Government been required to specify when each defendant joined the conspiracy and what acts each committed, the statute-of-limitations question could have been resolved on a concrete record. Instead, the denial allowed the Government to maintain a fog of vagueness—alleging a conspiracy stretching back to 2008 while preserving the ability to argue that the relevant conduct fell within the limitations period. Thus, the Government could have it both ways: a sweeping indictment on paper and the flexibility to narrow its theory if pressed, with no accountability for the discrepancy.

The government expanded the indictment backward by more than five years after the statute had run, transforming a three-month conspiracy into a six-year operation. When defendants challenged that expansion under *Ratcliff*, the magistrate concluded that the Second Superseding Indictment was timely because it alleged a conspiracy continuing into September 2013. (Doc. 78 at 4 (citing *United States v. Butler*, 792 F.2d 1528, 1532 (11th Cir. 1986); *United States v. Italiano*, 894 F.2d 1280, 1282 (11th Cir. 1990)).) But that conclusion rested on the facial allegation of a continuing conspiracy—an allegation that could not be tested without particulars specifying when each defendant's participation began and ended. The denial of the bill of particulars thus protected an indictment that was, on its face, a material broadening of the timely charges.

Had the government been required to particularize the charges, it would have been forced to choose to: either charge only conduct within the limitations period, in which case the indictment would have resembled the narrow original charge, or commit to conduct outside the period, in which case the time bar would have been obvious. By keeping the indictment vague, the government avoided that choice. It prosecuted on an indictment that purported to reach back to 2008 while preserving the argument that the relevant conduct fell within the five-year window. That maneuver is precisely what *Ratcliff* forbids.

Appellant Diaz entered a guilty plea under the shadow of this defective indictment. A guilty plea does not waive a statute-of-limitations defense when the indictment itself shows that the chargers are time-barred. *United States v. Helmich*, 704 F.2d 547 (11th Cir. 1983) The vagueness of the Second Superseding Indictment, perpetuated by the denial of particulars, made it impossible for Diaz to assess whether the charges against him were lawful. He was forced to choose between pleading guilty to an indictment that may have been invalid or proceeding to trial on charges the government refused to define. Whether or not Appellant could assert error in the denial of the bill of particulars to co-defendants, he has shown that it denied all defendants due process because it potentially hid essential facts.

II. ALTERNATIVELY, THIS COURT SHOULD REMAND FOR RESENTENCING UNDER AMENDMENT 821'S ZERO-POINT OFFENDER PROVISION

Should this Court decline to reverse based on the statute of limitations issue raised above, Mr. Diaz respectfully requests remand for resentencing under Amendment 821 to the United States Sentencing Guidelines, which became retroactively applicable to defendants serving terms of imprisonment.

A. The Legal Framework Permits Modification of Mr. Diaz's Sentence

A motion to reduce an otherwise final sentence under 18 U.S.C. § 3582(c)(2) creates a limited and narrow exception to the rule that final sentences remain unmodified. See *United States v. Armstrong*, 347 F.3d 905, 909 (11th Cir. 2003). Section 3582(c)(2) specifically provides:

> [I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range

> that has subsequently been lowered by the Sentencing Commission . . . the court may reduce the term of imprisonment, after consulting the factors set forth in section 3553(a) to the extent they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2).

The Supreme Court has established that district courts must undertake a two-step process when considering relief under this provision. See *Dillon v. United States*, 560 U.S. 817 (2010). First, the court determines whether the defendant qualifies for relief under § 3582(c)(2). *Id.* at 826–27. The statute authorizes relief only when a retroactive amendment to the sentencing guidelines lowers the defendant's applicable sentencing guidelines range and relief remains consistent with applicable policy statements. *Id.* Where a defendant's sentence resulted from a substantial assistance motion, as here, a court may grant "a reduction comparably less than the amended guideline range." U.S.S.G. § 1B1.10(b)(2)(B).

Second, if the defendant qualifies for relief, the court exercises its discretion to determine whether to reduce the sentence after considering the § 3553(a) factors, *id.* at 826–27, and "the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment." U.S.S.G. § 1B1.10, cmt. n. 1(B).

The policy statement at § 1B1.10(a)(1) confirms: "In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable . . . has subsequently been lowered as a result of an amendment . . . the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2)."

B. Mr. Diaz Qualifies for Relief Under the Zero-Point Offender Amendment

Amendment 821's zero-point offender provision "provide[s for] a decrease of two levels from the offense level . . . for defendants who did not receive any criminal history points . . . and whose instant offense did not involve specified aggravating factors." Under U.S.S.G. § 4C1.1, a defendant qualifies for this two-level reduction when he satisfies all ten enumerated criteria:

(1) The defendant received no criminal history points from Chapter Four, Part A; (2) The defendant received no adjustment under § 3A1.4 (Terrorism); (3) The defendant used neither violence nor credible threats of violence in connection with the offense; (4) The offense resulted in neither death nor serious bodily injury; (5) The

instant offense of conviction is not a sex offense; (6) The defendant did not personally cause substantial financial hardship; (7) The defendant neither possessed, received, purchased, transported, transferred, sold, nor otherwise disposed of a firearm or other dangerous weapon (nor induced another participant to do so) in connection with the offense; (8) The instant offense of conviction falls outside § 2H1.1 (Offenses Involving Individual Rights); (9) The defendant received no adjustment under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious Human Rights Offense); and (10) The defendant received no adjustment under § 3B1.1 (Aggravating Role) and did not engage in a continuing criminal enterprise, as defined in 21 U.S.C. § 848.

Mr. Diaz satisfies each criterion. His offense involved no violence, caused no physical harm, and included none of the aggravating factors that would disqualify him from relief. As a zero-point offender whose case presents none of the enumerated exclusions, he falls squarely within the class of defendants Congress and the Sentencing Commission intended to benefit from this ameliorative amendment.

This Court should therefore remand this matter to the district court with instructions to consider resentencing under the newly applicable guidelines range.

CONCLUSION

The Second Superseding Indictment was filed after the statute of limitations expired and materially broadened the timely indictment by adding years of new conduct, additional defendants, and an expanded conspiracy theory that could not relate back under controlling Eleventh Circuit precedent. Because the indictment was time-barred as a matter of law, Mr. Diaz's conviction cannot stand, and this Court should vacate the judgment and remand with instructions to dismiss the indictment.

If the Court declines to reach the statute-of-limitations issue, it should remand for resentencing under Amendment 821's zero-point offender provision. The amendment applies retroactively, lowers Mr. Diaz's guideline range, and makes him eligible for a two-level reduction. A remand is therefore required so that the district court may consider the amended range and the § 3553(a) factors in light of the new, controlling framework.

For these reasons, the Court should vacate the conviction as time-barred, or alternatively remand for resentencing under Amendment 821.

Date: December 24, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Eleventh Circuit Rule 28-1. This brief contains 4335 words and uses a Bookman Old Style 14 point font.

The undersigned attorney further certifies that this brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type-style requirements of Fed.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally space typeface using Microsoft Office 365 in Bookman Old Style 14-point font.

/s/ Sonia E. O'Donnell
SONIA E. O'DONNELL

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF this 24th day of December, 2025 to:

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By: */s/ Sonia Escobio O'Donnell*
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