

24-2784-cr (L)
United States v. Carmona

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of April, two thousand twenty-six.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,
BARRINGTON D. PARKER,
MYRNA PÉREZ,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

24-2784 (Lead)
24-2977 (Con)
24-3264 (Con)

MARCO RUIZ OCHOA, MOSES VALDEZ, JUAN
ARELLANO,

Defendants,

DAVID CARMONA, DAVID BREND, GUSTAVO RODRIGUEZ,

Defendants-Appellants.

For Appellee:

T. JOSIAH PERTZ, Michael D. Maimin, Jacob R. Fiddelman, Assistant United States Attorneys for Jay Clayton, United States Attorney for the Southern District of New York, New York, NY.

1 For Defendants-Appellants:

RICHARD D. WILLSTATTER, Green & Willstatter,
White Plains, NY, *for Defendant-Appellant David*
Carmona.

PETER J. TOMAO, Esq., Garden City, NY, *for*
Defendant-Appellant David Brend.

JEFFREY COHN, Esq., New York, NY, *for Defendant-*
Appellant Gustavo Rodriguez.

Appeal from judgments of the United States District Court for the Southern District of New
York (Rochon, J.).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED** that the judgments of the district court are **AFFIRMED**.

Defendants-Appellants David Carmona, David Brend, and Gustavo Rodriguez appeal from
amended judgments of conviction entered on January 28, 2025 as to Carmona and February 28,
2025 as to Brend and Rodriguez by the United States District Court for the Southern District of
New York.

This appeal concerns the IcomTech cryptocurrency Ponzi scheme. IcomTech purported to
be a cryptocurrency-focused multi-level marketing (“MLM”) scheme. Instead, it was a fraud.
Defendants-Appellants are the founder of IcomTech, David Carmona; its website designer,
Gustavo Rodriguez; and one of IcomTech’s top promoters, David Brend. Carmona, Rodriguez,
and Brend, along with several non-appellant defendants, were indicted in the Southern District of
New York and charged with conspiracy to commit wire fraud in violation of 18 U.S.C. § 1343.
Carmona pleaded guilty. After a nine-day trial, the jury returned a guilty verdict as to Rodriguez
and Brend. The district court sentenced all three to various terms of imprisonment followed by
supervised release and ordered forfeiture and restitution.

1 Appellants raise several issues on appeal, including (1) that the evidence was insufficient
2 to find that Brend had the requisite knowledge that IcomTech was a fraud; (2) that the district
3 court abused its discretion in admitting evidence of Brend's participation in other fraudulent Ponzi
4 schemes while declining to allow him to present evidence that he participated in lawful MLMs;
5 (3) that the district court abused its discretion in admitting evidence of the impact of the crime on
6 victims; (4) that the district court improperly provided a conscious avoidance jury instruction; (5)
7 that the district court erred in denying Rodriguez's request for a mistrial in response to a jury note;
8 (6) that Appellants' sentences are procedurally unreasonable; and (7) that Brend and Rodriguez
9 received ineffective assistance of counsel at trial.

10 We assume the parties' familiarity with the underlying facts, the procedural history of the
11 case, and the issues on appeal, which we set forth in this summary order only as necessary to
12 explain our decision to **AFFIRM**.

13 **1. Sufficiency of the Evidence**

14 Brend first argues there was insufficient evidence to prove he had the requisite knowledge
15 that IcomTech was fraudulent.¹ Brend Br. at 31. We disagree. In assessing a sufficiency of the
16 evidence challenge, "we view the evidence in the light most favorable to the Government with all
17 reasonable inferences resolved in the Government's favor." *United States v. Requena*, 980 F.3d
18 30, 43 (2d Cir. 2020). The "verdict must be upheld if any rational trier of fact could have found
19 the essential elements of the crime had been proved beyond a reasonable doubt." *United States v.*
20 *Valle*, 807 F.3d 508, 515 (2d Cir. 2015).

¹ Brend does not challenge the sufficiency of the evidence as to the existence of a conspiracy, only that he participated in the conspiracy with knowledge of its unlawful objective. See Brend Br. at 31 ("The issue was not whether IcomTech was a fraud, which was conceded, but rather whether Mr. Brend had the requisite knowledge at the time.").

1 Here, the evidence was sufficient to support Brend's conviction. At trial, the government
2 introduced evidence that Brend directed IcomTech victims to send money to his shell company
3 with false statements on the memo lines of checks; that he structured his deposits and withdrawals
4 to avoid \$10,000 reporting thresholds; that Brend touted his relationship with IcomTech's
5 leadership to draw in victims; and that when victims considered withdrawing funds, Brend
6 attempted to convince them not to. Moreover, the government introduced evidence at trial that
7 Brend promoted several other fraudulent cryptocurrency Ponzi schemes to the IcomTech victims.
8 *See e.g.*, Trial Tr. at 1188–95. Brend's misstatements to victims, directions to channel money to
9 his shell company, and attempts to lull investors to remain invested in the scheme amply support
10 the jury's conclusion that Brend had knowledge of IcomTech's unlawful ends. As the district
11 court properly concluded, Brend's argument "boil[s] down to his contention that inferences could
12 have been drawn in favor of his ignorance and thus innocence of the scheme, rather than in favor
13 of finding him guilty of knowingly joining the conspiracy." Brend App'x 647. We agree with the
14 district court that the jury had an ample basis on which to draw such inferences in favor of Brend's
15 knowing participation in the crime. Thus, the district court did not err in denying Brend's Rule 29
16 and Rule 33 motions.

17 **2. Evidentiary Rulings**

18 Brend argues that the district court erred in admitting evidence of his participation in other
19 fraudulent cryptocurrency schemes while preventing him from introducing evidence of his
20 participation in lawful MLM businesses. Rodriguez argues, for his part, that the district court erred
21 in admitting evidence concerning the victims' experiences when they lost money to the IcomTech
22 scheme.

1 We review “rulings on the admissibility of trial evidence for abuse of discretion.” *United*
2 *States v. Rowland*, 826 F.3d 100, 114 (2d Cir. 2016). “A district court has abused its discretion if
3 it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the
4 evidence or rendered a decision that cannot be located within the range of permissible decisions.”
5 *United States v. Fazio*, 770 F.3d 160, 165 (2d Cir. 2014) (quoting *In re Sims*, 534 F.3d 117, 132
6 (2d Cir. 2008)). We reverse only if an error affects a “substantial right,” Fed. R. Evid. 103(a),
7 meaning that the error “had a ‘substantial and injurious effect or influence’ on the jury’s verdict,”
8 *United States v. Garcia*, 413 F.3d 201, 210 (2d Cir. 2005) (quoting *United States v. Dukagjini*, 326
9 F.3d 45, 62 (2d Cir. 2003)). “[W]here a court, upon review of the entire record, is sure that the
10 evidentiary error did not influence the jury, or had but very slight effect, the verdict and the
11 judgment should stand.” *Id.* (alterations adopted and other marks omitted) (quoting *Kotteakos v.*
12 *United States*, 328 U.S. 750, 764 (1946)).

13 Brend’s arguments are unavailing. First, the district court properly admitted the evidence
14 of Brend’s participation in other fraudulent cryptocurrency schemes. Such evidence is plainly
15 admissible under Rule 404(b), as it shows Brend’s intent and absence of mistake. Moreover, such
16 evidence is particularly probative in a case like this where Brend’s defense was that he merely
17 “acted as a conduit” or was himself a victim. Brend Br. at 34; see *United States v. Gata-Aura*, No.
18 22-283, 2024 WL 389422, at *2 (2d Cir. Feb. 2, 2024) (summary order) (“[T]he probative value
19 of the prior conviction was magnified by Moore’s defense in this case, . . . that he, like the
20 investors, was tricked . . . and that he terminated his relationship . . . as soon as he learned of the
21 fraud.”).

22 The district court also properly denied Brend’s request to provide evidence of his
23 participation in non-fraudulent MLMs. Generally, “good acts” character evidence is not allowed.

1 *See United States v. Dawkins*, 999 F.3d 767, 792 (2d Cir. 2021) (explaining that “[a] defendant
 2 may not seek to establish his innocence . . . through proof of the absence of criminal acts on specific
 3 occasions” because “such ‘good acts’ evidence is only relevant if we assume that a defendant acted
 4 in conformity with those prior good acts—*i.e.*, if we make the exact propensity inference Rule
 5 404(b)(1) is designed to prohibit” (quoting *United States v. Scarpa*, 897 F.2d 63, 70 (2d Cir.
 6 1990))); *United States v. Damti*, 109 F. App’x 454, 455–56 (2d Cir. 2004) (summary order).
 7 However, evidence of prior good acts may be admitted where it “bears directly on [the defendant’s]
 8 state of mind,” rather than his character. *United States v. Roldan*, 167 F.4th 569, 579 (2d Cir.
 9 2026). On appeal, Brend does not explain what evidence he would have admitted, nor why it
 10 would have been relevant. Accordingly, we can discern no error in the district court’s rejection of
 11 Brend’s bid to admit evidence.

12 As to Rodriguez, even assuming *arguendo* that the district court improperly admitted
 13 evidence of victim experience, he fails to argue successfully that he suffered any prejudice. The
 14 other trial evidence overwhelmingly supports the jury’s verdict. Rodriguez’s communications
 15 with Carmona, the ringleader of the IcomTech scheme, throughout the course of the conspiracy
 16 demonstrated his knowledge of the conspiracy at the very time he developed the website that was
 17 central to executing the scheme. Thus, any error had no “substantial and injurious effect or
 18 influence on the jury’s verdict.” *Garcia*, 413 F.3d at 210 (internal quotation marks omitted).

19 3. Conscious Avoidance

20 Rodriguez directly challenges the district court’s use of a conscious avoidance charge, and
 21 Brend collaterally attacks the conscious avoidance instruction via his ineffective assistance of
 22 counsel claim. “We review a claim of error in jury instructions *de novo*, reversing only where,
 23 viewing the charge as a whole, there was a prejudicial error.” *United States v. Aina-Marshall*, 336

1 F.3d 167, 170 (2d Cir. 2003). A conscious avoidance charge, also known as “willful blindness,”
2 *United States v. Graham*, 51 F.4th 67, 83 (2d Cir. 2022), is proper where the defendant has asserted
3 “the lack of some specific aspect of knowledge required for conviction” and there is “an
4 appropriate factual predicate for the charge, i.e., the evidence is such that a rational juror may reach
5 the conclusion beyond a reasonable doubt that the defendant was aware of a high probability of
6 the fact in dispute and consciously avoided confirming that fact,” *United States v. Fofanah*, 765
7 F.3d 141, 144–45 (2d Cir. 2014) (cleaned up).

8 Both Brend and Rodriguez primarily argue that there was no factual predicate for the
9 charge and the instruction was thus inappropriate, but this Court has recognized this is precisely
10 the type of case where the conscious avoidance charge is appropriate. When “sufficiently
11 suspicious circumstances” are present, “a mere failure to ask questions—even absent more
12 affirmative steps of avoidance—can demonstrate conscious avoidance.” *United States v. Wedd*,
13 993 F.3d 104, 119 (2d Cir. 2021). Sufficient red flags existed to support a conscious avoidance
14 charge. *See United States v. Ferguson*, 676 F.3d 260, 278 (2d Cir. 2011) (“Red flags about the
15 legitimacy of a transaction can be used to show both actual knowledge and conscious avoidance.”).
16 For example, Rodriguez created the website that, critical to the scheme, displayed ever-increasing
17 victim earnings and, in discussions with Carmona, expressed concerns that the website might “get
18 a lot of exposure” and “look[] more Ponzi-like.” Trial Tr. at 1078–79.

19 Moreover, “an erroneously given conscious avoidance instruction constitutes harmless
20 error if the jury was charged on actual knowledge and there was ‘overwhelming evidence’ to
21 support a finding that the defendant instead possessed *actual* knowledge of the fact at issue.” *See*
22 *United States v. Ferrarini*, 219 F.3d 145, 154 (2d Cir. 2000). The district court did instruct the
23 jury on actual knowledge, Trial Tr. 1575–77, which was very strongly supported by the evidence

at trial. And in any event, there was a sufficient if not significant factual predicate for the conscious avoidance charge here.

4. Jury Note

Rodriguez next argues that the district court abused its discretion in declining to grant a mistrial in response to a jury note.² We disagree. “The decision to declare a mistrial is left to the sound discretion of the judge, but the power ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes.” *Renico v. Lett*, 559 U.S. 766, 774 (2010) (internal quotation marks omitted). Institutional considerations counsel “in favor of appellate deference to the trial judge’s evaluation of the significance of possible juror bias.” *Arizona v. Washington*, 434 U.S. 497, 513 (1978).

The jury note provides no basis for concluding that a mistrial was appropriate. Nothing in the note and nothing adduced at trial suggests that external considerations entered the jury room to induce a sense of fear. *Cf. United States v. Ruggiero*, 928 F.2d 1289, 1300 (2d Cir. 1991) (affirming district court’s dismissal of a juror who expressed “a continuing state of fearfulness” after being approached by two men in his driveway late at night). And to the extent the jury note did suggest that some jurors might have apprehensions about the publication of their identities, whether such apprehensions warranted further investigation is precisely the sort of issue that our precedent recognizes the district court is in the best position to resolve, exercising its sound discretion. *See, e.g., id.* at 1301 (“Further, decisions as to when to question jurors and the manner of that inquiry are generally left to the trial judge’s broad discretion.”). Moreover, the district court

² The jury note read: “We have a question about our identity and the confidentiality of it post trial. Names were written during jury selection and some concerns around that.” Trial Tr. at 1602. Before the court and the parties had an opportunity to discuss possible responses, the jury reported that it had arrived at a verdict. Trial Tr. at 1603. Rodriguez moved for a mistrial, suggesting that the jury could be “afraid of the defendants.” Trial Tr. at 1604–05. The district court declined to inquire into the deliberative process and denied the mistrial motion. Trial Tr. at 1614–15.

1 had already instructed the jury not to base their verdict on “fear or sympathy or bias.” Trial Tr. at
 2 1586–87, 1614. Accordingly, the district court did not abuse its discretion in declining to declare
 3 a mistrial.

4 **5. Procedural Reasonableness**

5 Appellants all argue that their sentences were procedurally unreasonable. The primary
 6 thrust of their argument is that the district court improperly calculated the loss attributable to the
 7 scheme and, therefore, improperly calculated the applicable Guidelines range.³ We disagree. “A
 8 district court commits procedural error where it fails to calculate the Guidelines range . . . , makes
 9 a mistake in its Guidelines calculation, . . . treats the Guidelines as mandatory[,] . . . does not
 10 consider the § 3553(a) factors, or rests its sentence on a clearly erroneous finding of fact.” *United*
 11 *States v. Cavera*, 550 F.3d 180, 190 (2d Cir. 2008) (en banc) (citations omitted). In assessing the
 12 procedural reasonableness of a sentence, we “review[] the district court’s interpretation of the
 13 Sentencing Guidelines *de novo*” and its factual findings for clear error. *United States v.*
 14 *Rubenstein*, 403 F.3d 93, 99 (2d Cir. 2005).

15 Section 2B1.1(b) of the Sentencing Guidelines provides for a stepped, cumulative
 16 sentencing enhancement based on the loss amount attributable to the unlawful scheme.
 17 Application Note 3(A) defines “loss” as the “greater of actual loss or intended loss.” U.S. Sent’g

³ Brend also argues that the district court erroneously applied a sophisticated means enhancement as well as an obstruction of justice enhancement. We disagree. The Guidelines specifically state that “hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.” U.S. Sent’g Guidelines Manual § 2B1.1 cmt. n.9 (U.S. Sent’g Comm’n 2024). Here, Brend used a shell company and directed victims to make false representations on the checks paid to the shell company. As to the obstruction of justice enhancement, Brend did not merely continue to assert his own innocence despite a contrary jury verdict. For example, Brend asserted in a sworn declaration that he never took money from the victims for his own use, because his bank accounts were used to exchange received monies for Bitcoin in a “dollar for dollar exchange.” See Brend App’x 354. However, ample trial evidence showed that he used the money paid into his shell company to pay his personal credit card bills and make payments to his wife. Accordingly, the district court did not err in applying these enhancements. See *United States v. Lewis*, 62 F.4th 733, 746–47 (2d Cir. 2023).

Guidelines Manual § 2B1.1(b)(10)(c) cmt. n.3(A) (U.S. Sent’g Comm’n 2023). “The sentencing court is only required to make a reasonable estimate of the loss.” *United States v. Lacey*, 699 F.3d 710, 719 (2d Cir. 2012) (internal quotation marks omitted). Deference to the district court’s loss determination is particularly appropriate “where, as here, the sentencing judge also presided over a weeks-long trial and heard a great deal of live testimony.” *See id.* at 720.

Here, the district court concluded that the losses attributable to the IcomTech scheme were greater than \$25 million but less than \$65 million. That calculation was not clearly erroneous, as the trial evidence substantiated the district court’s calculation. The district court based its conclusion on, *inter alia*, the Hernandez spreadsheet. Carmona App’x 161. This spreadsheet reflected a \$58 million balance invested in the scheme from approximately 24,000 individuals. Carmona App’x 162, 165. These loss numbers were, in part, corroborated by victim testimony and the testimony of Juan Arellano. Moreover, the district court considered a screenshot sent by Carmona to Rodriguez in March 2019, reflecting IcomTech earnings of at least \$21 million, months before the scheme would unravel. Carmona App’x 164. Thus, the district court did not clearly err in concluding that the loss amount was greater than \$25 million but less than \$65 million.⁴

6. Ineffective Assistance of Counsel

Brend and Rodriguez each argue that they received ineffective assistance of counsel. Brend argues that the district court erred in denying his posttrial Rule 33 motion which was

⁴ All Appellants received sentences significantly below the applicable Guidelines range, so even if the district court clearly erred in its loss calculation, that error was harmless. *See United States v. Thompson*, 921 F.3d 82, 88 (2d Cir. 2019). The district court specifically explained that it would impose the same sentences regardless of the potentially differing Guidelines ranges at stake, *see, e.g.*, Carmona App’x 227–28, which squarely renders the purported errors harmless in any event, *see United States v. Moseley*, 980 F.3d 9, 28–29 (2d Cir. 2020) (explaining any error may be harmless where “the District Court specifically states that it would have departed to the same level regardless of whether it had accepted the defendant’s guideline arguments” (quoting *United States v. Elephant*, 999 F.2d 674, 678 (2d Cir. 1993))).

1 premised in part on an ineffective assistance of counsel claim, while Rodriguez brings his
2 ineffective assistance claim on direct appeal. Both claims are unavailing. To prevail on an
3 ineffective assistance of counsel claim, a defendant must (1) demonstrate that counsel's
4 performance fell below an "objective standard of reasonableness" under "prevailing professional
5 norms;" and (2) "affirmatively prove prejudice." *Strickland v. Washington*, 466 U.S. 668, 687–
6 88, 693–94 (1984). The Supreme Court has instructed that, because "[t]he object of an
7 ineffectiveness claim is not to grade counsel's performance," "[i]f it is easier to dispose of an
8 ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be
9 followed." *Id.* at 697.

10 On appeal, Brend largely rehashes the same arguments made in his Rule 33 motion. Each
11 of these arguments again fail. First, the district court correctly reasoned that Brend's proposed
12 additional witnesses could not speak to his knowledge of the fraudulent nature of the scheme due
13 to hearsay restraints. Brend App'x 654. Second, the district court correctly concluded that
14 evidence of transfers from his cryptocurrency wallet "fit squarely within the IcomTech scheme."
15 Brend App'x 655 (internal quotation marks omitted). Third, the decision not to call Brend as a
16 witness does not amount to ineffective assistance because Brend does not claim that trial counsel
17 failed to inform him of his right to testify or overrode his desire to testify. Brend App'x 657.

18 As to Rodriguez, because "in most cases a motion brought under [28 U.S.C.] § 2255 is
19 preferable to direct appeal for deciding claims of ineffective assistance," *Massaro v. United States*,
20 538 U.S. 500, 504–05 (2003), we decline to consider Rodriguez's claim here, *see United States v.*
21 *Morris*, 350 F.3d 32, 39 (2d Cir. 2003) ("When faced with a claim for ineffective assistance of
22 counsel on direct appeal, we may: (1) decline to hear the claim, permitting the appellant to raise

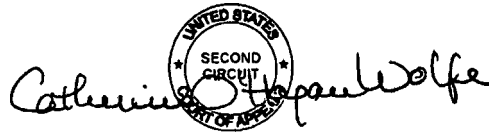
1 the issue as part of a subsequent petition for writ of habeas corpus pursuant to 28 U.S.C. §
2 2255”).

3 * * *

4 We have considered Appellants’ remaining arguments and find them to be without merit.

5 Accordingly, the judgments of the district court are **AFFIRMED**.

6 FOR THE COURT:
7 Catherine O’Hagan Wolfe, Clerk

The block contains a handwritten signature, "Catherine O'Hagan Wolfe", written in cursive. The signature is positioned over a circular official seal. The seal features the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, with small stars on either side of the central text.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: April 15, 2026
Docket #: 24-2784
Short Title: United States of America v. Carmona

DC Docket #: 1:22-cr-551-1
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Trial Judge - Jennifer
Louise Rochon

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed electronically or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: April 15, 2026
Docket #: 24-2784
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DC Docket #: 1:22-cr-551-1
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Trial Judge - Jennifer
Louise Rochon

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to
prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of July, two thousand twenty-six.

United States of America,

Appellee,

v.

Marco Ruiz Ochoa, Moses Valdez, Juan Arellano,

Defendants,

David Carmona, David Brend, Gustavo Rodriguez,

Defendants - Appellants.

ORDER

Docket Nos: 24-2784 (Lead)
24-3264 (Con)
24-2977 (Con)

Appellant, David Brend, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk