

No. 25-50033

In the United States Court of Appeals for the Fifth Circuit

United States of America,

Plaintiff-Appellee,

v.

Luis Francisco Corona-Montano,

Defendant-Appellant.

On Appeal from the United States District Court
for the Western District of Texas

APPELLEE'S BRIEF FOR THE UNITED STATES

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Recommendation on Oral Argument

Oral argument is unnecessary. The briefs and record adequately present the facts and legal arguments relevant to this appeal, and oral argument would not significantly aid the decisional process. *See* Fed. R. App. P. 34(a)(2)(C).

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Jurisdiction

This appeal arises from a final criminal judgment entered January 23, 2025. (ROA.71-77.) The district court had jurisdiction under 18 U.S.C. § 3231. The defendant filed a timely notice of appeal on January 23, 2025. (ROA.65-67.) This Court has jurisdiction under 28 U.S.C. § 1291.

Statement of the Issue

Section 2L1.1(b)(4) of the Sentencing Guidelines increases a defendant's offense level for transporting illegally present aliens if the offense involved transporting an unaccompanied minor. Defendant was caught transporting an unaccompanied minor alien. Did the district court correctly increase his offense level under § 2L1.1(b)(4)?

Statement of the Case

Defendant was arrested for and charged with transporting illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (a)(1)(B)(ii). (ROA.11.) Defendant had picked up a group of six illegally present aliens from the desert brush near Fort Hancock, Texas, and transported them in his SUV. (ROA.124-26.) As Defendant drove west on a local road toward Interstate-10, he noticed that a Border Patrol unit was following, and he repeatedly ordered one of his passengers—a girl under 18—to “Tirate! Tirate!” (“Throw yourself! Throw yourself!”). (ROA.133.) Border Patrol agents saw the girl jump out and roll on the

ground while the SUV was still moving. (ROA.132-33.) Agents stopped to help the girl and identified her as an unaccompanied, 17-year-old minor. (ROA.132, 147.)

After agents activated their emergency lights and sirens to make a stop, Defendant failed to yield and continued speeding away. (ROA.132.) As he was speeding away, Defendant ordered another passenger, “Avientate!” (“Throw yourself!”) (ROA.133.) As Defendant merged onto an interstate highway, agents saw another passenger jump out and stopped to help her. (ROA.132.) Texas state troopers responded to the area help in the pursuit and successfully deployed a device to deflate the SUV’s tires. (ROA.132.) Defendant got off the highway but then lost control and crashed. (ROA.133.)

Agents apprehended Defendant and the aliens he was carrying, as well as the two aliens who jumped from his SUV. (ROA.133.) Neither Defendant nor the aliens he carried were legally present in the United States. (ROA.133.) Each alien was each supposed to pay \$9,000 to \$10,000 to be smuggled. (ROA.133.)

Defendant was indicted for conspiracy to transport aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I), (a)(1)(A)(ii), and (a)(1)(B)(i) (Count One), and transporting aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (a)(1)(B)(ii) (Count Two). (ROA.21-22.) He pled guilty to the indictment without a plea agreement. (ROA.103-29.)

The presentence report (PSR) assessed Defendant to be at a total offense level of 21 and a criminal history category of IV, for a guidelines range of 57 to 71 months' imprisonment. (ROA.142.) The PSR increased Defendant's offense level by four under section 2L1.1(b)(4) of the Sentencing Guidelines because one of the aliens transported by Defendant was a minor who was unaccompanied by the minor's parent, adult relative, or legal guardian. (ROA.135); *see* U.S. Sent'g Guidelines Manual § 2L1.1(b)(4) (U.S. Sent'g Comm'n 2024).¹ Defendant objected to this enhancement under the theory that he did not know he was transporting a minor. (ROA.86-90, 146.)² At sentencing, the District Court overruled Defendant's objection and applied the enhancement. (ROA 89-90.) The District Court sentenced Defendant to 71 months' imprisonment. (ROA. 95.) Defendant then appealed. (ROA.65-66.)

¹ All references to the Guidelines Manual are to the 2024 version unless otherwise noted.

² Defendant had other objections in the district court, but the only issue on appeal is the enhancement for unaccompanied minor. (*See* Def. Br. 10.) Defendant's other objections were to a two-level increase under §2L1.1(b)(6) for intentionally or recklessly creating a substantial risk of death or serious bodily injury and a two-level increase under §2L1.1(b)(7)(D) for another person sustaining bodily injury. (ROA.135-136, 146.) These objections were overruled at sentencing. (ROA.88-89.)

Summary of Argument

The district court did not err in enhancing Defendant's offense level under § 2L1.1(b)(4) because Defendant's offenses involved the transportation of an unaccompanied minor. Section 2L1.1(b)(4) does not include a mens rea requirement that the offender knew he was transporting an unaccompanied minor. First, the plain text of § 2L1.1(b)(4) does not require knowledge. Instead, the text mirrors the language of other guidelines provisions that this Court has been held to not require knowledge. Second, statutory context counsels against grafting on a knowledge requirement not in the guidelines' text. As surrounding provisions of § 2L1.1 show, when the guidelines drafters do intend a knowledge requirement, they have been explicit. Third, application of § 2L1.1(b)(4) without a knowledge requirement aligns with due-process principles and the Sentencing Commission's stated purpose in drafting that provision. The district court was correct to apply the enhancement.

Argument

The district court correctly increased Defendant’s offense level because his offense involved transporting an unaccompanied minor whether or not he knew or could reasonably foresee that one of his passengers was an unaccompanied minor.

Section 2L1.1(b)(4) of the Sentencing Guidelines increases the offense level for transporting an illegally present alien “if the offense involved the smuggling, transporting, or harboring of a minor who was unaccompanied by the minor’s parent, adult relative, or legal guardian.”

U.S.S.G. § 2L1.1(b)(4). This Court has twice held that this enhancement applies “without consideration of [the defendant’s] knowledge, or the foreseeability, of the minors’ involvement.” *United States v. Cordova-Briseno*, No. 21-51063, 2022 WL 5422400, at *1 (5th Cir. Oct. 7, 2022); *United States v. Flores-Avila*, 783 F. App’x 440, 440-41 (5th Cir. 2019).

Those holdings, which the district court followed here, are correct.

A. Standard of Review

This Court reviews the district court’s interpretation of the Sentencing Guidelines de novo and its factual findings for clear error. *United States v. Williams*, 610 F.3d 271, 292 (5th Cir. 2010.)

B. Argument

1. Text and context support the inference that a defendant need not know about or foresee a minor’s involvement.

First, the plain text of the guidelines supports this Court’s and the district court’s understanding of § 2L1.1(b)(4). This Court has explained that “the guidelines drafters have been explicit when they wished to

import a mens rea requirement.” *United States v. Serfass*, 684 F.3d 548, 552 (5th Cir. 2012) (quoting *United States v. Singleton*, 946 F.2d 23, 25 (5th Cir. 1991)). For example, in *Serfass*, this Court assessed a guideline enhancement that applies when “the offense involved the importation of amphetamine or methamphetamine.” *Id.* at 550-53 (quoting and discussing USSG § 2D1.1(b)(5)). This Court concluded that this text applied whether or not the defendant had knowledge of the importation. *Id.* at 552. *Serfass* is instructive because both the guideline considered there and the guideline in this case use “the offense involved” phrasing to describe an enhancement. Compare USSG § 2D1.1(b)(5), with *id.* § 2L1.1(b)(4). Thus, as in *Serfass*, the lack of any mens rea requirement in the plain text of §2L1.1(b)(4) shows that there is no such requirement.

Contrasting the text of § 2L1.1(b)(4) with the surrounding text reinforces this conclusion. “The inclusion of a knowledge requirement in one portion of the guidelines confirms that its omission from another portion of the same guideline was intentional.” *Serfass*, 684 F.3d at 552; see also *Singleton*, 946 F.2d at 25 (“Because statutory sections are to be construed as coherent wholes, the precision of the drafters in including mens rea in neighboring sections indicates that the reason that the section does not use the word ‘knowingly’ is that the drafters did not wish such a requirement to apply.”) A neighboring provision, § 2L1.1(b)(6), includes a specific mens rea—that “the offense involved *intentionally* or *recklessly* creating a substantial risk of death or serious bodily injury to

another person.” USSG § 2L1.1(b)(6) (emphasis added). The explicit inclusion of a mens rea in § 2L1.1(b)(6) confirms that the omission of such a requirement from § 2L1.1(b)(4) was intentional.

This Court has applied similar reasoning to other subsections of § 2L1.1. Another neighboring provision, § 2L1.1(b)(7), enhances a defendant’s offense level for alien trafficking “[i]f any person died or sustained bodily injury.” USSG § 2L1.1(b)(7). Because § 2L1.1(b)(6) includes an explicit requirement of intentional or reckless conduct, but § 2L1.1(b)(7) does not, this Court has read § 2L1.1(b)(7) to require only a result, not intent. *See United States v. Garcia-Guerrero*, 313 F.3d 892, 898 (5th Cir. 2002).³ Similarly, the contrast between § 2L1.1(b)(4), which lacks any explicit mens rea, and § 2L1.1(b)(6), which explicitly includes one, supports this Court’s and the district court’s view that § 2L1.1(b)(4) has no mens rea requirement.

2. A plain-text reading of the unaccompanied-minor guideline does not lead to an absurd result.

“When the language of the guideline is unambiguous, the plain meaning of that language is controlling unless it creates an absurd result.” *United States v. Wesley*, 123 F.4th 423, 428 (5th Cir. 2024) (quoting *United States v. Cortez-Gonzalez*, 929 F.3d 200, 203 (5th Cir. 2019), and *Serfass*, 684 F.3d at 551). No absurd result is created when the court

³ When *Garcia-Guerrero* was decided the subsections of § 2L1.1(b) were numbered differently.

applied the plain text of the guidelines in this case to conclude that §2L1.1(b)(4) does not include a mens rea requirement.

First, there is nothing absurd about enhancing an offense level under § 2L1.1(b)(4) even if the defendant does not know he or she is transporting a minor. “Strict-liability sentencing enhancements do not violate due process: Such enhancements do not create a crime where one otherwise would not exist and are consistent with a court’s traditional power to consider evidence at sentencing even if that evidence would not have been admissible during the guilt-innocence phase of a trial.” *Serfass*, 684 F.3d at 553.

Second, this Court’s view of § 2L1.1(b)(4) is consistent with the Sentencing Commission’s goal of extending protection for smuggled minors and its recognition that defendants are likely to be aware of the risk that unaccompanied minors are involved. When the Commission amended § 2L1.1(b)(4) to its present form in 2016, it explained that its amendments

were made in light of data, testimony, and public comment indicating that: (1) in recent years there has been a significant increase in the number of unaccompanied minors smuggled into the United States; (2) unaccompanied minors being smuggled are often exposed to deprivation and physical danger (including sexual abuse); (3) the smuggling of unaccompanied minors places a particularly severe burden on public resources when they are taken into custody; and (4) alien smuggling is typically conducted by multimember commercial enterprises that accept smuggling victims without regard to their age, such that an individual defendant is likely to be aware of the

risk that unaccompanied minors are being smuggled as part of the offense.

U.S. Sent’g Guidelines Manual, App. C, amend. 802 (Supp. Nov. 2012-Nov. 2016).

3. Defendant’s comparison to the firearms guidelines fails because that comparison supports, rather than undermines, the district court’s reasoning.

Defendant’s position finds no support in the guideline for firearm offenses he cites, § 2K2.1. (*See* Def. Br. 14.) Section 2K2.1(b)(4) enhances the offense level for firearms offenses when a firearm was stolen or had an obliterated serial number. USSG § 2K2.1(b)(4). An application note explicitly rejects any knowledge requirement to portions of §2K2.1(b)(4). *Id.*, cmt. n.8. Defendant argues that without such a rejection, a knowledge requirement should be imputed. (Def. Br. 14.) But his reasoning ignores relevant case law and the context and history of the application note he cites.

In *Singleton*, a case decided *before* the application note Defendant cites was added, this Court held that § 2K2.1(b)(4) applied regardless of the defendant’s knowledge. *Singleton*, 946 F.2d at 24-27; U.S. Sent’g Guidelines Manual § 2K2.1 (U.S. Sent’g Comm’n 1991). So this Court’s holding in *Singleton* was based on the plain text of the guideline, not the application note. And this Court in *Singleton* adopted an approach precisely opposite of what Defendant suggests: Rather than the Sentencing Commission having to expressly reject a knowledge requirement, “the

guidelines drafters have been explicit when they wished to import a *mens rea* requirement.” *Singleton*, 946 F.2d at 25. Similarly, in *United States v. Prien-Pinto*, the Ninth Circuit explained that its own strict liability interpretation of §2K2.1 was based on the guideline’s text, not the application note. 917 F.3d 1155, 1158 (9th Cir. 2019) (“Working without the...weight of this Application Note, we reached the result it now prescribes through sound construction of the Guidelines.”).

It also helps to look at Guideline 2K2.1(b)(4) to put the application note in context. 2K2.1(b)(4) includes a variety of enhancements with a variety of standards:

(4) If (A) any firearm was stolen, increase by 2 levels; or (B)(i) any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye; or (ii) the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, increase by 4 levels.

Application Note 8(B) to this guideline then clarifies the *mens rea* required for different subsections of this guideline:

(B) Defendant’s State of Mind.—Subsection (b)(4)(A) or (B)(i) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye. However, subsection (b)(4)(B)(ii) only applies if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun

Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact.

The text of the application note shows that it was intended to clarify that subsection (b)(4)(B)(ii) of Section 2K2.1 did require knowledge or willful blindness, while the rest of (b)(4) does not. Therefore, the application note should not be read to stand for the proposition that any rejection of a knowledge requirement must be explicit, as Defendant suggests. Rather, it should be read as a clarification of a specific Guidelines provision that happened to have different mens rea requirements for different portions of the same provision.

4. That Defendant was convicted of conspiracy in addition to the substantive alien-transportation offense does not support grafting a requirement of reasonable foreseeability onto the guideline.

Defendant's effort to characterize this as a "conspiracy case" does not support his suggestion that the involvement of an unaccompanied minor must have been reasonably foreseeable. (Def. Br. 15.) As this Court has explained, "[t]he reasonably foreseeable standard applies to the acts of others committed as part of jointly undertaken criminal activity, but no such standard applies to acts committed by the defendant." *Flores-Avila*, 783 F. App'x at 441; *see also Cordova-Briseno*, 2022 WL 5422400, at *1; USSG § 1B1.3(a)(1)(A) (B). Rather, a defendant's relevant conduct includes "all acts and omissions committed . . . by [him]." USSG § 1B1.3(a)(1)(A). Defendant pled guilty not just to a conspiracy, but also to the substantive transportation offense. (ROA.124, 132.) And

his conduct was not limited to an agreement but included his own transportation of illegally present aliens. (ROA.124-26, 132-34.) His two offenses were grouped for the guideline calculation. (ROA.135.) Therefore the enhancement under §2L2.1(b)(4) applied, as Defendant's direct involvement in the transportation of illegally present aliens means that the enhancement did not need to rely on the reliably foreseeable acts of others. *See Cordova-Briseno*, 2022 WL 5422400, at *1; *Flores-Avila*, 783 F. App'x at 441; USSG § 1B1.1(a)(1)(A). Instead, the enhancement could rely on Defendant's own acts and omissions, which included transporting an unaccompanied minor.

Conclusion

For these reasons, this Court should affirm the district court's sentence.

Respectfully submitted,

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By: /s/ Shuhao Wang
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Certificate of Service

I certify that on August 29, 2025, I filed this brief through this Court's electronic case-filing system, which will serve it on all registered counsel.

/s/ Shuhao Wang
Shuhao Wang
Assistant United States Attorney

* * *

Certificate of Compliance

I certify that:

(1) this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 2601 words, excluding the parts of the brief exempted by Rule 32(f); and

(2) this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Office Word 365 in size 14 Calisto MT font.

Dated: August 29, 2025

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