

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS ENRIQUE PADILLA,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

A straightforward application of the laws of restitution results in the affirmance of Padilla's sentence. The Government will participate in oral argument, however, should the Court believe that oral argument will aid its decisional process.

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STATEMENT OF JURISDICTION

This is an appeal from a district court’s final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. The court sentenced defendant-appellant Luis Padilla on June 18, 2025, but deferred determining the amount of restitution until the amount could be ascertained. ROA.115, 118. On August 28, 2025, the court amended its judgment to include the restitution amount. ROA.124, 127. Padilla filed a timely notice of appeal on September 2, 2025. ROA.129. This Court has jurisdiction under 18 U.S.C. 3742. *See, e.g., Manrique v. United States*, 581 U.S. 116, 120-121, 125 (2017) (holding that a defendant seeking to appeal an order imposing restitution in a deferred restitution case must file a notice of appeal from the amended judgment ordering restitution).

STATEMENT OF THE ISSUES

1. Whether the district court plainly erred in concluding that Padilla’s 18 U.S.C. 242 conviction for willfully using unreasonable force as a law enforcement officer constituted a “crime of violence” under the Mandatory Victims Restitution Act, 18 U.S.C. 3663A.

2. Whether the district court erred in ordering Padilla to pay restitution for the victim’s therapy expenses pursuant to the Mandatory Victims Restitution Act, which provides that the court “shall” order restitution for medical expenses, including psychological care.

STATEMENT OF THE CASE¹

In March 2025, Luis Padilla pleaded guilty to a one-count Bill of Information charging him with Deprivation of Rights Under Color of Law, in violation of 18 U.S.C. 242. ROA.220-225, 234-235. In his Plea Agreement, Padilla admitted that in December 2023, while he was Chief of Police for the Sunset Police Department in Sunset, Louisiana, he willfully used unreasonable force against victim R.A. ROA.230.

Specifically, as Padilla was investigating a hit-and-run while on duty, he approached R.A. ROA.231. Even though the suspect of the hit-and-run was a female and R.A. is a male, and even though R.A. was not even aware of the hit-and-run, Padilla immediately approached R.A. in

¹ Padilla’s framing of the incident draws heavily from his sentencing memorandum. *See, e.g.*, Br. 4-5 (citing Doc. 62). The Government has compiled its statement of the case based on Padilla’s plea agreement, the video of his offense conduct, the facts set forth in the presentence report, and transcripts from the sentencing and restitution hearings.

an aggressive manner and placed him in handcuffs. ROA.231-232. While R.A. was handcuffed, Padilla poked R.A. in the chest and neck and began to yell, including in R.A.'s face. ROA.232. For example, despite R.A. not saying anything, Padilla poked him in the chest and threatened: "I'm going to show you who's the boss." Doc. 69, Ex. A.² R.A. did not react. ROA.232.

Padilla then pushed R.A. against a car and said: "Watch how bad I am. Watch how really bad I am." Doc. 69, Ex. A. Padilla then "forcefully twisted" R.A.'s left thumb and wrist, even though R.A. was handcuffed, was not resisting "in any way," and did not pose a threat to anyone. ROA.232. Padilla followed it up with: "That's right. You wanna see how bad the Chief of Police is?" Doc. 69, Ex. A. R.A. went to the hospital the same day, and medical providers confirmed he suffered a sprained wrist and thumb. Doc. 62-4, at pp. 5-6. He was prescribed pain medication, and his thumb was placed in a splint. Doc. 62-4, at pp. 5-6.

² As Padilla notes (Br. 3 n.1), sealed documents were provided without appeal record pagination and are cited by the document number used in the district court. In this brief, "Doc. __, at __" will be used for those citations.

Padilla pleaded guilty to a misdemeanor Section 242 violation. ROA.220-225, 229. The victim, R.A., submitted a victim impact statement recounting the “nightmare” he experienced at the hands of Padilla. Doc. 57, at ¶ 18. R.A. described not only the physical pain and injury he suffered because of the incident, but also the “mental” and psychological pain. *Ibid.* He described the incident as “one of the worst moments” of his life, explaining that he later moved from Sunset out of “fear” of Padilla. *Ibid.* R.A. noted that on “many” occasions, he has cried from “watching the video [of the incident] and having to relive” it. *Ibid.* He referred to the incident as a “haunting memory.” *Ibid.*

R.A. delivered a similar statement at Padilla’s sentencing hearing. ROA.202-203. He stated that he lives with fear “every single day” and described how his life has “forever changed.” ROA.203. Indeed, before pronouncing Padilla’s sentence, the district court observed that R.A. “clearly is still emotional about what happened to him that day.” ROA.207. The court sentenced Padilla to five years of probation, with the first six months to be served under home incarceration. ROA.125-126. The court deferred determining the amount of restitution until the amount could be ascertained. ROA.118.

The Government later requested that the district court order \$5,312.08 in restitution. Doc. 73-1, at p. 1. The Government requested an estimated \$5,000 for 20 one-hour therapy sessions for R.A., pursuant to a licensed psychologist's recommendation, and \$312.08 in moving expenses incurred by R.A. when he relocated from Sunset after the incident. Doc. 73-1, at pp. 3-4. In its request, the Government noted that R.A. had requested therapy on multiple occasions due to the trauma he experienced during the incident. Doc. 73-1, at pp. 2-3.

At the subsequent restitution hearing, the district court heard from Dr. Lawrence Dilks, a practicing psychologist of 47 years, about R.A.'s need for medical care. ROA.165. Dr. Dilks testified that after reviewing the case and meeting with R.A., he concluded that R.A. exhibited post-traumatic stress disorder (PTSD) symptoms due to the incident with Padilla. ROA.165-168. Dr. Dilks noted that R.A. reported "a wide variety of symptoms typically associated with trauma," including flashbacks, intrusive thoughts, sleep disorder, anxiety, depression, inconsistencies in memory, hypervigilance, and more. ROA.169. Dr. Dilks did not have "any doubt" that R.A. was suffering from PTSD as a result of the incident and needed treatment, and Dr. Dilks confirmed that R.A. expressed that he

“needs to talk to someone” about the incident. ROA.169. Dr. Dilks also indicated that he believed therapy would be beneficial for R.A. ROA.171. The court declined to order restitution for R.A.’s moving expenses but ordered Padilla to pay \$3,500 for R.A.’s psychological treatment based on Dr. Dilks’s testimony establishing the rate for counseling sessions. ROA.127, 178, 192.

SUMMARY OF ARGUMENT

Padilla seeks relief from his obligation to pay restitution for medical expenses that he caused by assaulting the victim in this case. But under the Mandatory Victims Restitution Act, payment of those expenses is just that: mandatory.

Padilla contends that his conviction is not covered by the Act because it is not for a “crime of violence.” Not so. A “crime of violence” is “an offense that has as an element the use” of physical force. Padilla, then a law enforcement officer, was convicted of willfully depriving the victim of the constitutional right to be free from the unreasonable use of force. True to its name, this offense “has as an element the use” of physical force.

To circumvent this conclusion, Padilla omits the operative analytical framework from his brief. Instead, he relies on cherry-picked quotations from *United States v. Williams*, 343 F.3d 423 (5th Cir. 2003), a case that addressed a different issue in a different context. But *Williams* cannot bear the weight Padilla places on it; at minimum, it cannot establish that the district court plainly erred in concluding that Padilla committed a crime of violence.

Alternatively, Padilla asks this Court to play district judge, find that the victim did not actually intend to seek medical treatment, and throw out the restitution award. But this Court cannot reweigh the district court's credibility determination, and the restitution order was supported by the evidence. Accordingly, Padilla's sentence should be affirmed.

ARGUMENT

I. The district court did not plainly err in ordering restitution because Padilla was convicted of a crime of violence.

A. Standard of review

For the first time on appeal, Padilla argues that the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. 3663A, does not apply to his misdemeanor Section 242 conviction. Br. 20-24. As Padilla admits (Br.

19-20), because he did not make this argument below, this Court reviews for plain error. *See United States v. Borino*, 123 F.4th 233, 245-246 (5th Cir. 2024) (stating that “[u]npreserved objections to a restitution order” are reviewed for plain error and reviewing defendant’s unpreserved argument that his conviction was not an “offense” covered by the MVRA for plain error).

“To prevail under plain error review, a defendant must show (1) error, (2) that is clear or obvious, and (3) that affected the defendant’s substantial rights.” *United States v. Dubois*, 164 F.4th 418, 422 (5th Cir. 2026) (quoting *United States v. Hinojosa*, 749 F.3d 407, 411 (5th Cir. 2014)). “If all three of these conditions are met, the court has discretion to remedy the error, but that discretion should ‘be exercised only if the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.’” *Ibid.* (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)). “[T]he defendant has the burden of establishing each of the four requirements for plain-error relief,” and “[s]atisfying all four prongs of the plain-error test ‘is difficult.’” *Greer v. United States*, 593 U.S. 503, 508 (2021) (quoting *Puckett*, 556 U.S. at 135).

B. Padilla was convicted of a crime of violence.

The MVRA requires the payment of restitution to victims of certain offenses, including to the victim of a “crime of violence.” 18 U.S.C. 3663A(c)(1)(A)(i). As relevant here, the MVRA defines a “crime of violence” as “an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. 16(a); *see also* 18 U.S.C. 3663A(c)(1)(A)(i). To determine whether an offense satisfies that definition, courts apply the categorical approach, or, in the case of a statute that defines multiple offenses, the modified categorical approach. *See Mathis v. United States*, 579 U.S. 500, 504-506 (2016).

Under the categorical approach, to determine whether an offense is a crime of violence, courts look solely to “the elements of the crime of conviction” to determine the offense the defendant was convicted of. *Mathis*, 579 U.S. at 504; *see United States v. Hagen*, 60 F.4th 932, 955 (5th Cir. 2023). Then, the court evaluates whether the offense the defendant was convicted of “has as an element the use, attempted use, or threatened use of physical force against the person or property of another” and therefore is a “crime of violence.” 18 U.S.C. 16(a).

“Some statutes, however, have a more complicated” structure. *Mathis*, 579 U.S. at 505. If the statute defining the offense lists “elements in the alternative, and thereby define[s] multiple crimes,” the statute is “divisible,” and courts apply the modified categorical approach. *United States v. Torres*, 923 F.3d 420, 424 (5th Cir. 2019) (quoting *Mathis*, 579 at 505). Under the modified categorical approach, because the statute at issue defines multiple crimes, courts look to “a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of.” *Ibid.* (quoting *Mathis*, 579 U.S. at 505-506). The court then evaluates whether that crime qualifies as a crime of violence. *See id.* at 425.

The statute Padilla was convicted of, 18 U.S.C. 242, falls into this latter category of statutes that define multiple offenses. Padilla’s brief, however, skips the divisibility analysis entirely and assumes, wrongly, that the categorical approach applies. *See* Br. 20-23. But the modified categorical approach controls, and under it, Padilla was convicted of a crime of violence: his misdemeanor Section 242 conviction for using unreasonable force necessarily requires the use of physical force as an

element. He relies solely on this Court’s decision in *Williams* as evidence to the contrary (Br. iii, 2, 23-25), but that reliance is misplaced.

1. Section 242 is divisible.

Because Section 242 is divisible, the modified categorical approach applies. “A statute is ‘divisible’ when it ‘sets out one or more elements of the offense in the alternative.’” *United States v. Hinkle*, 832 F.3d 569, 572-573 (5th Cir. 2016) (quoting *Descamps v. United States*, 570 U.S. 254, 257 (2013)). To determine whether a statute is divisible, a court must “distinguish between a statute that ‘lists multiple elements disjunctively,’ and is therefore divisible, from a statute that ‘enumerates various factual means of committing a single element,’ and is therefore not divisible.” *United States v. Rodriguez-Flores*, 25 F.4th 385, 388 (5th Cir. 2022) (quoting *Mathis*, 579 U.S. at 506). Section 242 provides:

Whoever, under color of any law . . . willfully subjects any person in any State . . . to the deprivation of any rights . . . secured or protected by the Constitution or laws of the United States . . . shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt

to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. 242.

Most relevant here, Section 242 is divisible by the specific “right[]” that is “depriv[ed]” by the person acting under color of law, which stems from the portion of “the Constitution” or the “law[]” that “secure[s] or protect[s]” that right.³ 18 U.S.C. 242. Section 242 criminalizes the willful “deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States” by an individual acting under color of law. 18 U.S.C. 242. As Padilla recognizes (Br. 22), the

³ Section 242 is also divisible based on its graduated penalty structure, *see Mathis*, 579 U.S. at 518 (“If statutory alternatives carry different punishments, then under *Apprendi* [*v. New Jersey*, 530 U.S. 466 (2000)] they must be elements.”); *United States v. Williams*, 343 F.3d 423, 431-434 (5th Cir. 2003) (holding that under *Apprendi*, Section 242 establishes multiple separate offenses), and the different circumstances within its increased penalty clauses, which require juror unanimity and therefore are elements, *see Erlinger v. United States*, 602 U.S. 821, 834 (2024) (“Virtually ‘any fact’ that ‘increase[s] the prescribed range of penalties to which a criminal defendant is exposed’ must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea).” (alteration in original) (quoting *Apprendi*, 530 U.S. at 490)); *United States v. Hinkle*, 832 F.3d 569, 575 (5th Cir. 2016) (“Elements must be agreed upon by a jury.” (footnote omitted)). When combined with the deprivation of rights divisibility analysis, this further establishes that Padilla’s misdemeanor Section 242 conviction is a crime of violence.

statute is written expansively—spanning the entire Constitution and United States Code—to encompass a broad array of official misconduct that violates individual rights. *See, e.g., United States v. Lanier*, 520 U.S. 259, 264-265 (1997) (stating that Section 242’s “general language” “incorporate[s] constitutional law by reference”); *see also United States v. Kozminski*, 487 U.S. 931, 941 (1988) (stating that “Congress intended” for Section 242’s counterpart, 18 U.S.C. 241, “to incorporate by reference a large body of potentially evolving federal law”). It encompasses, for example, the due process right to be free from sexual abuse by a state actor, *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 450-452 (5th Cir. 1994) (en banc); or, as here, the Fourth Amendment right to be free from unreasonable seizure, which includes the right to be free from a law enforcement officer’s use of unreasonable force, *see, e.g., Graham v. Connor*, 490 U.S. 386, 394-395 (1989).

Given the statute’s “general language,” *Lanier*, 520 U.S. at 264, an indictment alleging a Section 242 violation must specify, and the jury must agree on, the specific “right” that was deprived. *See United States v. Cruikshank*, 92 U.S. 542 (1875). In *Cruikshank*, the Court addressed the sufficiency of an indictment alleging a violation of what is now 18

U.S.C. 241.⁴ 92 U.S. at 548. Like Section 242, Section 241 criminalizes interfering with a right secured “by the Constitution or laws of the United States.” 18 U.S.C. 241; *see also Cruikshank*, 92 U.S. at 548 (quoting this language in the Enforcement Act); *Lanier*, 520 U.S. at 264-265 (referring to Section 241 as Section 242’s “companion conspiracy statute” and noting their similar language). In *Cruikshank*, the Court held that an indictment alleging only this “general statement of the rights to be interfered with,” without specifying the particular right that was deprived, was unconstitutionally vague. 92 U.S. at 557-559.

In reaching that conclusion, the Court cited an indictment’s purpose—to inform the defendant of the nature of the charge to allow him to mount a defense and to invoke the Constitution’s protections against double jeopardy, and to allow the court to assess whether the facts are sufficient to sustain a conviction—and reiterated that “every ingredient of which the offence is composed must be accurately and clearly alleged”

⁴ Section 241 was originally enacted as Section 6 of the Enforcement Act of 1870, 16 Stat. 141, 144. *See United States v. Williams*, 341 U.S. 70, 83 (1951) (Appendix: Criminal Civil Rights Legislation: Comparative Table of Successive Phraseology). It assumed its present form as 18 U.S.C. 241 in 1948. *Ibid.* At the time of *Cruikshank*, it was known as the Enforcement Act. 92 U.S. at 548.

in the indictment. *Cruikshank*, 92 U.S. at 558-559 (quoting *United States v. Cook*, 84 U.S. 168, 174 (1872)). In particular, the Court noted that “where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species,—it must descend to particulars.” *Id.* at 558 (citation omitted). Because the indictment contained “no specification of any particular right,” the Court dismissed those counts. *Id.* at 557-559.

The same is true for an indictment alleging a violation of Section 242. Section 242 “includes [the same] generic terms” as Section 241, and therefore the indictment must “descend to particulars” by charging the particular right deprived. *Cruikshank*, 92 U.S. at 557-559; *see also id.* at 559 (noting that “the indictment should state the particular[]” right). Because the “particular right” deprived under Section 242 is an “ingredient” that must be alleged and then proven beyond a reasonable doubt, *see id.* at 557-559, it is an element. *See Alleyne v. United States*, 570 U.S. 99, 107 (2013) (“The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an ‘element’ or ‘ingredient’ of the charged offense.”); *Mathis*,

579 U.S. at 504 (“‘Elements’ are the ‘constituent parts’ of a crime’s legal definition—the things the ‘prosecution must prove to sustain a conviction.’ At a trial, they are what the jury must find beyond a reasonable doubt to convict the defendant” (citation omitted)). Indeed, the Government followed *Cruikshank*’s mandate here, charging Padilla with willfully depriving the victim of the right “to be free from unreasonable seizures, which includes the right to be free from a law enforcement officer’s use of unreasonable force during an arrest.” ROA.234.

This Court’s decision in *Franco-Casasola v. Holder*, 773 F.3d 33 (5th Cir. 2014), reinforces the conclusion that each constitutional or statutory “right” that serves as a basis for a Section 242 prosecution establishes a separate offense. There, the petitioner was convicted of violating 18 U.S.C. 554(a), which prohibits, as relevant here, fraudulently exporting “any merchandise, article, or object contrary to any law or regulation of the United States.” *Franco-Casasola*, 773 F.3d at 36 (quoting 18 U.S.C. 554(a)). This Court held that the statute was divisible and therefore the modified categorical approach applied to determine whether the

defendant had been convicted of an aggravated felony for removal purposes. *Id.* at 36-39.

At the outset, this Court observed that Section 554(a) is an “unusual criminal statute” that “criminalizes actions that are contrary to other laws and regulations,” and it noted that “the relevant elements of those other laws and regulations will also be included in an indictment and the fact-finder will need to determine they were committed.” *Franco-Casasola*, 773 F.3d at 36-39. This Court concluded that, by requiring the defendant’s actions to be “contrary to any law or regulation of the United States,” the “statute thereby incorporates as divisible elements the finite, though lengthy, list of every statute and regulation of the United States that make facilitating the transportation of ‘merchandise, article[s], or object[s]’ an act that is ‘contrary to any law[].’” *Id.* at 38 (alterations in original) (quoting 18 U.S.C. 554(a)). The Court noted that “a prosecutor charging a violation of Section 554(a) must select the relevant elements from the possible alternative statutes and regulations” and is therefore required “to allege the defendant illegally facilitated the transportation of specific items identified in a statute.” *Id.* at 38. The Court then looked to the indictment, which outlined “the specific statutory manner in

which” the petitioner violated the statute, to “determine which law the defendant violated.” *Id.* at 41-42. The indictment showed that the defendant’s conviction was for fraudulently purchasing “firearms,” which allowed the Court to determine that he had been convicted of “illicit trafficking in firearms,” an aggravated felony that made him removable. *Id.* at 36, 38, 42.

Franco-Casasola’s analysis of Section 554(a) applies with full force to Section 242. Section 242, like Section 554(a), “criminalizes actions that are contrary to other laws and regulations,” *Franco-Casasola*, 773 F.3d at 37, by prohibiting the deprivation of rights “secured or protected by the Constitution or laws of the United States,” 18 U.S.C. 242; *see also Lanier*, 520 U.S. at 264-265 (stating that “in lieu of describing the specific conduct it forbids,” Section 242 “incorporate[s] constitutional law by reference”). Section 242 “thereby incorporates as divisible elements the finite, though lengthy, list of every statute and [constitutional provision] of the United States,” *Franco-Casasola*, 773 F.3d at 38, that “secure[s] or protect[s]” a right, 18 U.S.C. 242. As with a prosecutor alleging a violation of Section 554(a), a “prosecutor charging a violation of Section [242] must select the relevant elements from the” constitutional provision

or law at issue and include them in the indictment, “and the fact-finder will need to determine they were committed.” *Franco-Casasola*, 773 F.3d at 36, 38; *see pp. 13-16, supra*. Therefore, “[t]he elements of the indicted offense under Section [242] are not just the general ones of that statute”—that there was a “deprivation of a[] right” that is “secured or protected by the Constitution or laws of the United States,” 18 U.S.C. 242—“but also the more specific elements charged that are based on the accompanying statutory [or constitutional] violations described in the indictment”—that there was a deprivation of a *specific* right, like the right to be free from unreasonable force. *Franco-Casasola*, 773 F.3d at 41. *Franco-Casasola* reinforces that Section 242 is divisible and the modified categorical approach applies. *See also Richardson v. United States*, 526 U.S. 813, 819 (1999) (reasoning that the “breadth” of the statute prohibiting criminal enterprises counseled against “treating each individual violation [of the statute] as a means,” rather than an element, “for that breadth aggravates the dangers of unfairness that doing so would risk”).

Finally, if there were any doubt as to whether the specific right deprived is an element or a means, a “peek at the [record] documents”

makes clear that the right deprived is an element. *Mathis*, 579 U.S. at 518 (alteration in original) (citation omitted). The Supreme Court has held that a court may look to the record documents for the “limited purpose” of determining whether a listed item is an element of the offense.⁵ *Ibid.* (citation omitted). The example provided by the Court was a defendant charged with burgling a “building, structure, or vehicle”; if all of those alternative locations were included in the indictment, or if the indictment “use[s] a single umbrella term like ‘premises,’” that would indicate that “each alternative [location] is only a possible means of commission, not an element.” *Id.* at 519. But the indictment here does not “use a single umbrella term like ‘[right],” nor does it list possible “alternative[]” rights. *Ibid.* Rather, it “indicate[s], by referencing one [specific right] to the exclusion of all others”—namely, the right “to be free from unreasonable seizures, which includes the right to be free from a law enforcement officer’s use of unreasonable force during an arrest” (ROA.234)—“that the statute contains a list of elements, each one of which goes toward a separate crime.” *Mathis*, 579 U.S. at 519.

⁵ “Only if the answer is yes can the court make further use of the materials,” as in the following section. *Mathis*, 579 U.S. at 518-519.

Accordingly, the specific right deprived is an element, not a means, rendering Section 242 divisible by the right deprived.

2. Padilla’s conviction has as an element the use, attempted use, or threatened use of physical force.

“As the statute is divisible, [this Court] must determine which specific offense was [Padilla’s] crime of conviction.” *McLean v. Bondi*, 160 F.4th 144, 148 (5th Cir. 2025). “To determine exactly which offense in a divisible statute an individual committed, [the Supreme] Court has told judges to employ a ‘modified’ categorical approach, ‘review[ing] the record materials to discover which of the enumerated alternatives played a part’” in the defendant’s conviction. *Pereida v. Wilkinson*, 592 U.S. 224, 235 (2021) (second alteration in original) (quoting *Mathis*, 579 U.S. at 517). “[I]n the case of a plea bargain,” the record materials include the “charging document, written plea agreement, [and the] transcript of [the] plea colloquy.” *United States v. Martinez-Rodriguez*, 857 F.3d 282, 285 (5th Cir. 2017) (quoting *Shepard v. United States*, 544 U.S. 13, 16 (2005)).

The record materials establish that Padilla was convicted of “an offense that has as an element the use, attempted use, or threatened use of physical force.” 18 U.S.C. 16(a). The charging document accuses

Padilla of willfully depriving the victim of the right “to be free from unreasonable seizures, which includes the right to be free from a law enforcement officer’s use of unreasonable force during an arrest.” ROA.234. Similarly, the plea agreement lists the following elements as establishing Padilla’s Section 242 offense: (1) that Padilla acted under color of law; (2) that he deprived the victim “of a right secured or protected by the Constitution or laws of the United States; in this case, the right to be free from the unreasonable use of force by a law enforcement officer”; and (3) that he acted willfully. ROA.229. In the stipulation of facts supporting his guilty plea, Padilla admitted “that he willfully used unreasonable force.” ROA.232. Further, Padilla admitted to the same during his plea colloquy. ROA.142-145, 155. These materials establish that Padilla was convicted of willfully depriving victim R.A. of the right to be free from the unreasonable use of force by a law enforcement officer.

This offense qualifies as a crime of violence. In determining whether an offense “has as an element the use, attempted use, or threatened use of physical force” and is therefore a crime of violence, 18 U.S.C. 16(a), the “relevant question” is whether the offense “always

requires the government to prove—beyond a reasonable doubt, as an element of its case—the use, attempted use, or threatened use of force,” *United States v. Taylor*, 596 U.S. 845, 850 (2022). As its name suggests, a Section 242 conviction for willfully using unreasonable force always requires the government to prove the use, attempted use, or threatened use of force. *See, e.g., Stokeling v. United States*, 586 U.S. 73, 84 (2019) (declining to adopt a “heightened reading of” the definition of “physical force” and reiterating that “physical force” merely means “force capable of causing physical pain or injury” (citation omitted)); *Amador v. Vasquez*, 961 F.3d 721, 727 (5th Cir. 2020) (“To prevail on an excessive force claim, plaintiffs must show that the force employed was objectively unreasonable.”), *overruled on other grounds by Barnes v. Felix*, 605 U.S. 73, 76 (2025); *Graham*, 490 U.S. at 396 (discussing considerations in evaluating the reasonableness of a particular “*use of force*” (emphasis added)). Because a Section 242 violation for using unreasonable force categorically requires a defendant to use “physical force against the person or property of another,” 18 U.S.C. 16(a), Padilla’s conviction is a crime of violence under the MVRA.

In short, Padilla was convicted of willfully depriving the victim of the constitutional right to be free from the unreasonable use of force by a law enforcement officer, in violation of 18 U.S.C. 242. Because 18 U.S.C. 242 defines multiple offenses and therefore is divisible, the modified categorical approach applies. And under the modified categorical approach, Padilla’s conviction for willfully using unreasonable force—which requires, without exception, the use of “physical force against the person or property of another,” 18 U.S.C. 16(a)—is a “crime of violence” for purposes of the MVRA. 18 U.S.C. 3663A(c)(1)(A)(i). Therefore, the district court did not err in ordering Padilla to pay restitution, as the MVRA required.

3. *Williams* does not control.

Padilla contends that “[i]n *United States v. Williams*, 343 F.3d 423 (5th Cir. 2003), this Court held that misdemeanor deprivation of rights under color of law ‘is not a “crime of violence” because its elements ‘do not include the use, attempted use, or threatened use of physical force.’” Br. 23 (quoting *Williams*, 343 F.3d at 432). But this Court did no such thing.

In *Williams*, this Court held that the defendant’s Section 242 conviction “unquestionably” qualified as a crime of violence under 18 U.S.C. 924(c)(3), thereby subjecting the defendant to a ten-year mandatory minimum sentence. 343 F.3d at 431, 434. The defendant, a deputy sheriff, was convicted of violating Section 242 for shooting the victim and Section 924(c) for discharging a firearm during and in relation to a crime of violence; specifically, the Section 242 offense. *Id.* at 429-430. This Court rejected the defendant’s argument that his Section 924(c) conviction should be vacated on the ground that Section 242 was “not a ‘crime of violence’ as defined by 18 U.S.C. § 924(c)(3).” *Id.* at 431.

The issue in *Williams* was “whether § 242 defines three separate offenses or one offense with two sentence enhancements”; the parties “disagree[d] about which clause of § 242 [the Court] should examine.” *Williams*, 343 F.3d at 432. The defendant argued that the Court was limited to Section 242’s first clause, the misdemeanor offense, which sets the maximum term of imprisonment at one year, while the government argued that the Court should examine the second clause—involving bodily injury or the use of a dangerous weapon—which sets the maximum

term of imprisonment at ten years, because the defendant “was indicted, convicted, and sentenced pursuant to” the second clause. *Ibid.*

This Court agreed with the government. *Williams*, 343 F.3d at 432. Because *Apprendi v. New Jersey*, 530 U.S. 466 (2000), held that any fact “that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt,” and because Section 242’s bodily injury or dangerous weapon clause increases a defendant’s potential sentence from a misdemeanor to up to ten years’ imprisonment, this Court concluded that the “facts in the second clause of § 242—bodily injury or use of a dangerous weapon—” were necessarily “elements” that define an ‘offense.’” *Williams*, 343 F.3d at 432-433. “In *Apprendi*-land, therefore, § 242 defines three separate offenses, not one offense with two sentence enhancements.” *Id.* at 434. Because the defendant was “indicted for and convicted of the offense defined in the second clause of § 242,” which was unquestionably a crime of violence, this Court affirmed his Section 924(c) conviction. *Ibid.*

Padilla claims that the following portion of *Williams* establishes that “this Court has expressly found that [a] misdemeanor deprivation of rights” conviction is not a crime of violence (Br. 23):

Williams and the government disagree about which clause of § 242 we should examine; Williams argues that we may look only to the first. If he is correct, we must reverse the firearm conviction, because the offense defined by the first clause—wilful deprivation of rights under color of law—is not a “crime of violence.” These facts do not satisfy the definition in § 924(c)(3)(A), because they do not include the use, attempted use, or threatened use of physical force. Nor do they satisfy the definition in § 924(c)(3)(B), because they do not, by their nature, involve a substantial risk of physical force. The government counters that we also should examine the second clause

Williams, 343 F.3d at 432 (footnote omitted).

As an initial matter, although Padilla claims that the Court “held” that a misdemeanor Section 242 conviction is not a crime of violence in this portion of the opinion (Br. 23), it appears that this Court was not expressing an opinion on the issue, but merely restating the defendant’s argument: “that his firearm conviction must be vacated because deprivation of rights under color of law, § 242, is not a ‘crime of violence.’” *Williams*, 343 F.3d at 431 (quoting 18 U.S.C. 924(c)(3)). This portion of the opinion set the scene for the Court’s actual holding: that Section 242 “defines three separate offenses,” and the second one, which the defendant was convicted of, was “unquestionably” a crime of violence. *Id.* at 433-434. In this part of the opinion, the Court identified the issue and the parties’ respective positions: it noted that the parties “disagree[d]

about which clause of § 242” should be examined, described what the defendant “argue[d]” and how the government “counter[ed]” that argument, then summarized the issue the parties “essentially dispute[d]”: “whether § 242 defines three separate offenses or one offense with two sentence enhancements.” *Id.* at 432. Contrary to Padilla’s assertion (Br. 25), this language is not at all “clear precedent” “finding that a misdemeanor offense under” Section 242 is not a “crime of violence.”

At best, even assuming this Court was purporting to comment on the issue, any commentary was mere dictum, not a holding. The language and structure of the opinion make clear that, contrary to Padilla’s assertion (Br. 23), the Court did not “h[o]ld” that a misdemeanor Section 242 conviction is categorically not a crime of violence—that was not the issue in dispute. Rather, *Williams* held that Section 242 “defines three separate offenses,” and the second one, which Williams was convicted of, was a crime of violence. *Williams*, 343 F.3d at 433-434. This Court began by framing the issue: “whether § 242 defines three separate offenses or one offense with two sentence enhancements.” *Id.* at 432. The Court then applied “[t]he rule of *Apprendi*” to “hold” that “§ 242 defines three

separate offenses, not one offense with two sentence enhancements,” reasoning that “the facts in the second clause of § 242 are ‘elements’ that define an ‘offense,’” and that offense is “distinct from the ‘offense’” in the first clause of Section 242. *Id.* at 433-434; *see id.* at 433 (“We could not *hold* otherwise without flagrantly violating the rule of *Apprendi*.” (emphasis added)). The Court then discussed another case that supported its holding “that § 242 defines three separate offenses.” *Id.* at 433 (citing *United States v. Harris*, 293 F.3d 863 (5th Cir. 2002)). Applying this holding to the situation before it, this Court further held that Williams’ particular conviction—a Section 242 violation resulting in bodily injury and involving a dangerous weapon—was a crime of violence. *Id.* at 434.

Put differently, the *Williams* Court examined whether Section 242 is divisible, *see Williams*, 343 F.3d at 432-434 (identifying the issue as “whether § 242 defines three separate offenses”); *Torres*, 923 F.3d at 424 (“Thus, we first analyze whether the Texas assault statute is divisible, or to expand on that description, whether these subsections are identifying three different offenses”); concluded that it is, *Williams*, 343 F.3d at 433 (“[Section] 242 defines three separate offenses.”); identified the particular offense Williams was convicted of, *Williams*, 343 F.3d at 434

(“From his sentence and indictment, we know that Williams was indicted for and convicted of the offense defined in the second clause of § 242.” (footnote omitted)); *Mathis*, 579 U.S. at 505-506 (when a statute “define[s] multiple crimes,” a court can examine “a limited class of documents” to determine the crime “a defendant was convicted of”); and determined that offense was a crime of violence, *Williams*, 343 F.3d at 434 (“[T]his offense is unquestionably a ‘crime of violence under § 924(c)(3).’”).

Its holding, therefore, had nothing to do with whether a misdemeanor Section 242 violation is a crime of violence. Once the Court determined that Section 242 defined multiple offenses and therefore was divisible, the misdemeanor offense became wholly irrelevant because it was not the offense for which Williams was convicted. Accordingly, any idle remark regarding the misdemeanor clause was dictum, not a holding, and is not controlling here. *See International Truck & Engine Corp. v. Bray*, 372 F.3d 717, 721 (5th Cir. 2004) (“A statement is dictum if it ‘could have been deleted without seriously impairing the analytical foundations of the holding’ and ‘being peripheral, may not have received

the full and careful consideration of the court that uttered it.” (quoting *Gochicoa v. Johnson*, 238 F.3d 278, 286 n.11 (5th Cir. 2000)).

Indeed, this Court has recognized as much. In *Torres*, this Court stated that “it is not necessary to decide if all the elements [of the statute] qualify [as a crime of violence] if the subsections [of the statute] can each be classified as a different crime.” 923 F.3d at 425. If the subsections can each be classified as a different crime, then the Court “ha[s] to decide only if [the defendant’s] specific form of [the offense] was a crime of violence.” *Ibid.* The *Williams* Court determined that Section 242’s different clauses “can each be classified as a different crime.” *Ibid.*; *Williams*, 343 F.3d at 433-434 (“[Section] 242 defines three separate offenses.”). Accordingly, the *Williams* Court “ha[d] to decide only if [Williams’] specific form of [Section 242 violation] was a crime of violence.” *Torres*, 923 F.3d at 425. Thus, it was “not necessary to decide” whether the elements of a misdemeanor Section 242 violation, which Williams was not convicted of, qualify as a crime of violence, *ibid.*, and any comment on that issue was dictum.

This Court’s decision in *United States v. Segura* makes the point crystal clear. 747 F.3d 323 (5th Cir. 2014). The issue there was whether

the district court plainly erred in concluding that failure to register as a sex offender was a “sex offense.” *Id.* at 327-328. A prior panel of this Court had “previously commented” on the issue by “stat[ing] in a footnote that” failure to register qualifies as a sex offense. *Id.* at 328 (citing *United States v. Tang*, 718 F.3d 476, 483 (5th Cir. 2013)). This Court concluded that the prior panel’s statement was “dictum” that did not bind the Court, so it considered the issue anew and reached the opposite conclusion: that failure to register did not qualify as a sex offense. *Id.* at 329. In concluding that the earlier statement was dictum, this Court noted the prior panel’s “central focus” was a different issue, as the defendant’s “primary argument” did not focus on the failure to register issue; the panel “did not meaningfully consider whether failure to register qualifies as a sex offense”; and the panel’s “passing observation” on the issue was not “necessary to the result” of the case. *Ibid.* (citation omitted).

So too here. Notwithstanding the ambiguity as to whether the *Williams* Court even took a position on the first clause of Section 242’s status as a crime of violence, any “comment[]” the Court made on the issue was “mere dictum.” *Segura*, 747 F.3d at 328, 330. The *Williams* panel’s “central focus,” *id.* at 329, was “which clause of § 242 [the Court]

should examine,” that is, “whether § 242 defines three separate offenses,” *Williams*, 343 F.3d at 432. The defendant’s “primary argument,” *Segura*, 747 F.3d at 329, was that the Court “may look only to the first” clause because Section 242 defines “one offense with two sentence enhancements,” *Williams*, 343 F.3d at 432.⁶ This Court went on to reject that argument, concluding that Section 242 “defines three separate offenses” and that the defendant’s conviction under “the second clause of § 242” was a crime of violence. *Id.* at 434. In reaching that conclusion, the Court “did not meaningfully consider whether” a misdemeanor violation of Section 242, under the first clause, is a crime of violence because it had no reason to, *Segura*, 747 F.3d at 329—the defendant was convicted of a felony violation under Section 242’s second clause, *Williams*, 343 F.3d at 434. Accordingly, any “passing observation” made by the Court regarding the first clause’s classification as a crime of violence was not “necessary

⁶ This Court’s discussion of “sentence enhancements” underscores that *Williams* addressed a different issue than the one here. *Williams* applied *Apprendi*, which rejected the use of “sentence enhancements” and clarified that circumstances that expose a defendant to increased punishment—as Section 242 does for bodily injury, dangerous weapon, kidnapping, and so on—are elements. *Williams*, 343 F.3d at 432-433 (discussing *Apprendi*). Those elements are not present in Section 242’s first clause, under which Padilla was convicted.

to the result” and was dictum. *Segura*, 747 F.3d at 329. As such, this Court is “free to examine the question of whether” a misdemeanor Section 242 conviction for using unreasonable force is a crime of violence “without regard to the statement in the [*Williams*] opinion.” *Ibid.* And as the earlier analysis shows (see Section I.B.1, I.B.2, *supra*), such a conviction qualifies as a crime of violence.

C. Padilla cannot establish plain error.

Because Padilla was convicted of a crime of violence, the district court did not err in ordering restitution. But even assuming that the district court erred, Padilla cannot satisfy the “difficult” burden of establishing plain error. *Greer*, 593 U.S. at 508 (quoting *Puckett*, 556 U.S. at 135).

1. Any error was not clear or obvious.

First, any error was not “clear or obvious, rather than subject to reasonable dispute.” *Puckett*, 556 U.S. at 135. Padilla again hangs his hat on this front on *Williams* (Br. 23-24), but *Williams* does not establish clear error.

a. The *Williams* Court did not decide the issue presented here, and any statement about the issue was dictum.

As discussed, it is not clear that, in the portion of *Williams* relied upon by Padilla, this Court even took a position on the relevant issue here—whether a misdemeanor Section 242 conviction is as a crime of violence. *See* pp. 26-28, *supra*. This lack of an authoritative holding is fatal to Padilla’s claim of plain error. *See United States v. Limon*, 159 F.4th 327, 332-333 (5th Cir. 2025) (“In this circuit, a ‘lack of binding authority is often dispositive in the plain error context.’” (quoting *United States v. McGavitt*, 28 F.4th 571, 577 (5th Cir. 2022))). At minimum, this ambiguity cannot establish clear or obvious error.

Even assuming this Court was commenting on the issue, any observation was mere dictum (*see* pp. 28-34, *supra*), so Padilla cannot establish plain error. When this Court has not squarely addressed the issue or only discussed the issue in dictum, any error is not “clear or obvious, rather than subject to reasonable dispute.” *Puckett*, 556 U.S. at 135; *see United States v. Castillo-Estevez*, 597 F.3d 238, 241 n.1 (5th Cir. 2010) (concluding that caselaw cited by defendant did not “alter [this Court’s] conclusion that the district court committed no plain error”

because statement in other case “was *dicta*”), *overruled on other grounds* by *Peugh v. United States*, 569 U.S. 530 (2013); *United States v. Martinez*, No. 24-50438, 2025 WL 3035749, at *2 (5th Cir. Oct. 30, 2025) (“Where we have not ‘squarely addressed’ an issue, we cannot say that the district court has *clearly* erred in resolving it.” (quoting *United States v. Trejo*, 610 F.3d 308, 320 (5th Cir. 2010)); *United States v. Garcia-Rodriguez*, 415 F.3d 452, 455-456 (5th Cir. 2005) (rejecting defendant’s argument that court committed plain error because, while a case cited by the defendant “support[ed] the view urged by” him, “the parties [there] did not dispute” the operative issue, so the case was “not controlling”). Indeed, in *Segura* (see pp. 31-33, *supra*), when concluding that the district court did not commit “clear or obvious” error, this Court reasoned that the prior panel’s statement was “mere dictum,” so “parties could reasonably dispute whether failure to register qualifies as a sex offense.” 747 F.3d at 330. The same is true here: “[b]ecause the statement in [*Williams*] was mere dictum, parties could reasonably dispute whether” a misdemeanor Section 242 conviction is a crime of violence, and therefore the district court did not plainly err. *Ibid.*

b. Any error is subject to reasonable dispute.

Beyond any comment in *Williams* being dictum, Padilla cannot establish plain error because whether a misdemeanor Section 242 violation is a crime of violence is subject to reasonable dispute. To determine whether an error is clear or obvious, this Court “must decide whether controlling circuit or Supreme Court precedent has reached the issue in question, or whether the legal question would be subject to ‘reasonable dispute.’” *United States v. Sanches*, 86 F.4th 680, 686 (5th Cir. 2023) (quoting *United States v. Scott*, 821 F.3d 562, 570-571 (5th Cir. 2016)). “[T]here is not plain error unless the result ‘was plainly dictated by relevant laws and decisions.’” *Ibid.* (quoting *Wallace v. Mississippi*, 43 F.4th 482, 500 (5th Cir. 2022)). As discussed, no controlling precedent has reached the issue in question. *See* Section I.B.3, I.C.1.a, *supra*. Furthermore, a host of reasons establishes that the issue is subject to reasonable dispute and that the result Padilla urges was not “plainly dictated by” *Williams*. *Sanches*, 86 F.4th at 686 (citation omitted).

First, the MVRA, with its incorporation of Section 16’s definition of “crime of violence,” *see* 18 U.S.C. 3663A(c)(1)(A)(i), was not at issue in *Williams*. Rather, the question in *Williams* was whether Section

924(c)(3)'s definition of "crime of violence" was met. *Williams*, 343 F.3d at 431. This, alone, precludes a finding of plain error. While Padilla "need not show that [his] specific challenge has been addressed in a prior decision," he must at least "show error in the straightforward applications of existing cases," and "[a]rguments that require the extension of existing precedent cannot meet the plain-error standard." *Sanchez*, 86 F.4th at 686-687 (citation omitted). Padilla's argument would require the impermissible extension of *Williams* from Section 924(c)(3) to the MVRA and Section 16(a). *See id.* at 685-687 (rejecting defendant's argument that *Bruen* invalidated her Section 922(d)(1) conviction because "*Bruen* did not address § 922(d)(1)" and while this Court "recently extended *Bruen* to a preserved Second Amendment challenge to § 922(g)(8)," this Court had "not yet addressed the impact of *Bruen* on § 922(d)(1)"); *United States v. Lucas*, 849 F.3d 638, 645 (5th Cir. 2017) (holding that because this Court had "not directly addressed [the] situation" the defendant argued was error, any "finding of error" would be an impermissible "extension of precedent" (citation omitted)).

Additionally, Section 924(c)(3)'s definition of "crime of violence" is different from, and more restrictive than, Section 16(a)'s definition. The

former applies only to felonies, 18 U.S.C. 924(c)(3), while Section 16(a) (and thus the MVRA) includes misdemeanors, 18 U.S.C. 16(a). Necessarily, then, “the offense defined by the first clause [of Section 242]—wilful deprivation of rights under color of law—is not a ‘crime of violence,’” *Williams*, 343 F.3d at 432, *as that term is defined in Section 924(c)*, because it is a misdemeanor and Section 924(c) is limited to “felony offense[s],” *id.* at 431 (quoting 18 U.S.C. 924(c)(3)). Not only does this render any purported commentary in *Williams* about whether this clause was a crime of violence dictum and therefore subject to reasonable dispute, *Segura*, 747 F.3d at 330, but it also undercuts any argument that *Williams* “plainly dictate[s]” the conclusion that a misdemeanor Section 242 violation is not a crime of violence, *Sanchez*, 86 F.4th at 686 (quoting *Wallace*, 43 F.4th at 500). “[T]he language used in an opinion must be read in the light of the issues presented,” *Sinclair v. United States*, 279 U.S. 749, 767 (1929), and there could be “reasonable dispute” about whether *Williams*’ discussion of a result that was facially barred by the statute would translate to a context with no such bar.

Third, not only did the *Williams* Court never address whether a misdemeanor Section 242 violation is a crime of violence (*see* Section

I.B.3, *supra*), but it never considered the primary argument advanced by the Government here: that Section 242 is divisible by the right deprived by the person acting under color of law. Instead, the Court looked only to Section 242's graduated penalty structure and reasoned that, under *Apprendi*, the three clauses' increasing penalties necessarily established three different offenses. *See Williams*, 343 F.3d at 431-434. Thus, *Williams* never "reached the issue in question," and it does not "plainly dictate[]" any conclusion as to the divisibility of Section 242 by the right deprived. *Sanchez*, 86 F.4th at 686 (citation omitted); *see also Olivier v. City of Brandon*, 146 S. Ct. 916, 925 (2026) (stating that "general language in judicial opinions should be read as referring in context to circumstances similar to the circumstances then before the Court" and holding that, while "strictly speaking," language from an earlier opinion "fit[]," the prior "phrasing was not quite as tailored as it should have been" and therefore was not applicable; the prior court "did not consider" the issue in the context before the present court, and therefore the prior "language was not meant to address" the issue in that context) (citation omitted)).

Further, so far as the Government is aware, this Court has never addressed whether Section 242 is divisible based on the right deprived—another fatal flaw in Padilla’s quest to establish plain error. *See United States v. McGavitt*, 28 F.4th 571, 577 (5th Cir. 2022) (holding that defendant failed to show plain error because this Court “ha[d] not previously considered” the issue); *United States v. Broussard*, 669 F.3d 537, 550 (5th Cir. 2012) (“[A]s we have never addressed whether [certain conduct] constitutes a substantial step . . . any error on the district court’s part . . . could not be plain.”); *United States v. Vasquez*, 899 F.3d 363, 378 (5th Cir. 2018) (stating that an “issue of first impression” generally cannot form the basis for plain error (citation omitted)).

Indeed, the only case to address the issue of which the Government is aware *did* “look to the type of constitutional deprivation alleged when applying the modified categorical approach.” *United States v. Haley*, No. 2:23-cr-20191, 2024 WL 4906517, at *6 n.2 (W.D. Tenn. Nov. 27, 2024). That court followed the reasoning advanced by the Government here: because “it is well-established that the Government cannot bring a § 242 charge without identifying the specific right of which the victim was allegedly deprived”—there, as here, the right to be free from the

unreasonable use of force by a police officer—“the use of unreasonable force is an essential element of a § 242 charge that alleges this type of deprivation.” *Ibid.*; see *United States v. Fambro*, 526 F.3d 836, 847 (5th Cir. 2008) (“As the Supreme Court has said, ‘[a]t a minimum, court[s] of appeals cannot correct an error pursuant to Rule 52(b) unless the error is clear under current law.’” (alterations in original) (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993)); *United States v. Salinas*, 480 F.3d 750, 759 (5th Cir. 2007) (“In light of conflicting case law, any error that might have been committed by the district court was not ‘obvious,’ and therefore not plain error.” (quoting *United States v. Bennett*, 469 F.3d 46, 50 (1st Cir. 2006))).

Finally, intervening legal developments in the ever-evolving categorical-approach landscape further subject the “legal question” of whether a misdemeanor Section 242 violation is a crime of violence “to ‘reasonable dispute.’” *Sanchez*, 86 F.4th at 686 (quoting *Scott*, 821 F.3d at 571). Some of the changes in the nearly 23 years since *Williams* was decided include:

- The Supreme Court’s clarification as to when and what materials a court can reference when determining the offense the defendant was convicted of (*i.e.*, the modified categorical approach), *Shepard*, 544 U.S. at 16, 20-26;

- The Supreme Court’s decision that the second half of 18 U.S.C. 924(e)(2)(B)’s definition of crime of violence is unconstitutional, *see Johnson v. United States*, 576 U.S. 591 (2015);
- The Supreme Court’s subsequent extension of *Johnson* to 18 U.S.C. 16—the definition of crime of violence at issue in this case—and holding that the second half of 18 U.S.C. 16’s definition of crime of violence is unconstitutional, *see Sessions v. Dimaya*, 584 U.S. 148 (2018)⁷;
- The Supreme Court’s decision that the second half of 18 U.S.C. 924(c)’s definition of crime of violence is unconstitutional, thereby undermining half of the *Williams*’ Court’s conclusion that Williams’ felony violation of Section 242 was a crime of violence, *see United States v. Davis*, 588 U.S. 445 (2019); *Williams*, 343 F.3d at 431, 434; and
- The Supreme Court’s decision in *Mathis*, which “changed the game with respect to divisibility analysis,” *Rodriguez-Flores*, 25 F.4th at 388 (quoting *United States v. Urbina-Fuentes*, 900 F.3d 687, 696 (5th Cir. 2018))—the issue in dispute in *Williams*.

⁷ That the Court needed to decide *Dimaya* further underscores the lack of any clear or obvious error in this case. After *Johnson* held that Section 924(e)(2)(B) is unconstitutional, a panel of this Court applied that rationale to Section 16(b)’s similar provision and found it unconstitutional. *United States v. Gonzalez-Longoria*, 813 F.3d 225 (5th Cir. 2016). This Court then reheard the case en banc, disagreed with the panel, and upheld the constitutionality of Section 16(b), thereby creating a circuit split that led the Court to take up *Dimaya*. *See Dimaya*, 584 U.S. at 155 & n.2; *United States v. Gonzalez-Longoria*, 831 F.3d 670 (5th Cir. 2016) (en banc). Although the two provisions at issue there differed slightly, this illustrates the lack of straightforwardness in the crime of violence context.

In the end, Padilla relies on a case that appears not to have even taken a position on the issue he depends on it for; at best, did so in dictum when resolving a different legal question; in the context of a different statute; based on a different argument; two decades ago; in an area of the law that is constantly changing. Under those circumstances, any error cannot be plain.

2. Any error did not affect Padilla’s substantial rights.

To show that any error affected his substantial rights, Padilla must “demonstrate that [the error] ‘affected the outcome of the district court proceedings.’” *Puckett*, 556 U.S. at 135 (quoting *Olano*, 507 U.S. at 734); *see also Segura*, 747 F.3d at 330 (“In the sentencing context, [this] requires that the defendant demonstrate a reasonable probability that, but for the district court’s error, he would have received a lesser sentence.” (alteration in original) (quoting *United States v. Culbertson*, 712 F.3d 235, 243 (5th Cir. 2013))).

Padilla concedes (Br. 25), however, that while the district court ordered restitution pursuant to the MVRA, it could have ordered restitution under an identical, but discretionary, statute. *Compare* 18 U.S.C. 3663A(b)(2)(A), *with* 18 U.S.C. 3663(b)(2)(A). This discretionary

statute likewise authorized the district court to order restitution for the victim's psychological treatment. *See* 18 U.S.C. 3663(b)(2)(A). Padilla asserts that the district court would not have done so for two reasons, neither of which is persuasive.

First, Padilla contends that the need for R.A.'s psychological care was "not sufficiently proven." Br. 25-26. But the district court found the need sufficiently proven under the identical provision of the MVRA, and that finding was not clearly erroneous. *See* Section II, *infra*.

Second, Padilla claims that under the discretionary statute, the district court would have been required to consider his financial situation and would have "decline[d] to order restitution due to his inability to pay." Br. 26-27. Padilla admits that, as required, the district court "did consider [his] financial situation." Br. 26; *see* 18 U.S.C. 3663(a)(1)(B)(i)(II). He notes, though, that the court "decid[ed] to forego the imposition of any fine on Padilla and expressly found that he 'does not have the ability to pay,'" and claims that "the court would reach the same conclusion and decline to order restitution due to his inability to pay." Br. 26-27 (quoting ROA.210). But the record makes clear that the district court did not impose a fine *because* it was ordering restitution.

ROA.210 (“The Court finds that Mr. Padilla does not have the ability to pay a fine; therefore, I’m not imposing a fine. However, I will determine restitution at the restitution hearing set later this year.”); ROA.196, 209 (adopting the presentence report (Doc. 57, at ¶ 51), which stated that “[b]ased on the defendant’s reported financial condition, it would appear he is unable to pay a fine in either a lump sum, or in monthly installments, *in addition to* any restitution ordered by the Court.” (emphasis added)). A finding that Padilla could not pay *both* restitution and a fine does not equate to a finding that Padilla could not pay restitution.

Further, while Padilla highlights his mortgage and car payments (he and his wife own four cars, (Doc. 57, at ¶ 50)) as evidence of his inability to pay (Br. 27), the presentence report—which he does not dispute and, in fact, relies on (Br. 26-27)—shows that he has a monthly surplus of \$723, over double that of the \$300 restitution monthly installment. Doc. 57, at ¶ 10; ROA.127. Accordingly, he has failed to carry his burden of establishing a “reasonable probability” that the district court would not have ordered restitution. *Segura*, 747 F.3d at 330 (quoting *Culbertson*, 712 F.3d at 243); *see also United States v. Bringier*,

405 F.3d 310, 317-318 (5th Cir. 2005) (no plain error where defendant failed to demonstrate “that the sentencing judge would have reached a different result had it sentenced [the defendant] under an advisory scheme rather than a mandatory one”; this Court did “not know what the trial judge would have done had the Guidelines been advisory,” and the defendant “pointed to nothing in the record indicating that the sentencing judge would have reached a different conclusion under an advisory scheme”).

Additionally, any error did not affect Padilla’s substantial rights for a second reason: the district court declined to impose a fine because it instead ordered restitution. ROA.196, 209, 210. This Court has held that “where a court was ‘statutorily empowered to impose a fine in addition to restitution,’ a restitution order that included a potentially impermissible” restitution payment “did not affect substantial rights, because ‘the district court could have, and indeed likely would have imposed a fine, making any error harmless.’” *United States v. Dwyer*, 275 F. App’x 269, 271-272 (5th Cir. 2008) (quoting *United States v. Miller*, 406 F.3d 323, 330-331 (5th Cir. 2005)). The district court here was statutorily empowered to impose a fine but did not (*see* Doc. 57, at ¶¶ 59-61; 18

U.S.C. 3571(b)(5)), thereby defeating any argument that Padilla's substantial rights were affected.

3. Any error did not seriously affect the fairness, integrity, or public reputation of judicial proceedings.

Padilla has not satisfied any of the prerequisites to establishing plain error. But even assuming he could, the final step in the plain error analysis is for this Court to “decide whether to exercise [its] discretion to correct the error.” *United States v. Brown*, 826 F.3d 835, 840 (5th Cir. 2016). This Court exercises its discretion if “the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 838 (quoting *United States v. Escalante-Reyes*, 689 F.3d 415, 419 (5th Cir. 2012) (en banc)). But exercise of that discretion “is not automatic.” *Id.* at 840. Rather, this step “is meant to be applied on a case-specific and fact-intensive basis.” *Puckett*, 556 U.S. at 142.

Padilla contends this prong is satisfied for two reasons: the “rule of law fundamentally requires courts to comply with statutes,” and “awarding restitution without considering Padilla's limited financial capacity undermined the integrity of the sentencing process, where the court had already found he would be unable to pay any fine.” Br. 28. But

his first contention cannot be enough to satisfy this step; plain error requires, in every case, “some sort of deviation from a legal rule” that the court was required to follow, and this Court’s exercise of its discretion to correct the error “is not automatic.” *Brown*, 826 F.3d at 838, 840. His second contention similarly misses the mark: as discussed in the preceding section (*see* p. 45, *supra*), Padilla admits that the court considered his financial situation; his financial capacity is not “limited” (Br. 28; *see* Doc. 57, at ¶ 50); and the court concluded he could not pay both restitution and a fine, not solely restitution. Therefore, Padilla “has not met his burden” to show that the error resulted in a serious injustice, and this Court should “decline to exercise [its] discretion to correct the error.” *United States v. Prieto*, 801 F.3d 547, 554 (5th Cir. 2015).

Additionally, that Padilla was not surprised by the imposition of restitution counsels against exercise of this Court’s discretion. *See Prieto*, 801 F.3d at 554-555 (noting this Court has declined to exercise its discretion in part “because the defendants were not surprised by the error” (citing *United States v. Bohuchot*, 625 F.3d 892, 900 (5th Cir. 2010))); *see also United States v. Maharaj*, 176 F. App’x 536, 539 (5th Cir. 2006) (holding that integrity of judicial proceedings was not affected

where court erred by not warning defendant during plea colloquy that he might have to pay restitution because defendant “received notice of the possibility of restitution” before pleading guilty). At no point before this appeal did Padilla contest that he committed a crime of violence requiring payment of restitution, despite advance notice that restitution might be ordered. *See Prieto*, 801 F.3d at 554-555 (declining to exercise discretion in part because “the defendant’s PSR recommended the [erroneous] condition [of supervised release], and the defendant forwent not one but two opportunities to object to the condition (both in his response to the PSR and at sentencing))”; *see also id.* at 555 (“[T]he fact that a defendant did not object . . . may well count against the grant of Rule 52(b) relief.” (ellipsis in original) (quoting *Henderson v. United States*, 568 U.S. 266, 278-279 (2013)); Doc. 57, at ¶ 63 (presentence report; “Pursuant to 18 U.S.C. § 3663A, restitution shall be ordered in this case.”); Doc. 58, at pp. 137-138 (Padilla’s objection to presentence report; citing applicable statutory provision and claiming victim’s expenses were not for covered categories, not that restitution was inapplicable); Doc. 76, at pp. 1-7 (Padilla’s opposition to Government’s motion for restitution, advancing

similar argument); ROA.145-146 (during plea colloquy, court asking Government to confirm whether victim would request restitution).

Moreover, this Court has “consistently held that it is not necessary to correct an error if there is sufficient evidence in the record showing that the incorrect sentence was nevertheless fair.” *Brown*, 826 F.3d at 841. Padilla was ordered to pay \$3,500 for the victim to attend an industry-standard 20 therapy sessions to address the PTSD he developed from this incident. ROA.170-171, 177-178. Both the victim and a medical professional described the significant trauma the victim experienced, which the district court perceived. ROA.207 (at sentencing, court noting the victim “clearly is still emotional about what happened to him that day”); ROA.179 (at the restitution hearing, court noting it “certainly observed [R.A.’s] emotional distress”); *see Brown*, 835 F.3d at 841 (concluding that improperly ordered term of supervised release was nonetheless fair and did not call into question the integrity of judicial proceedings where district court “expressed its concern” at sentencing about defendant’s effort to comply with conditions of release). Indeed, victim R.A., handcuffed and helpless, was assaulted by a law enforcement officer who threatened to show him “how bad” he was and made good on

that promise. At the time, R.A. did not know what would happen next; he thought “he could be significantly injured.” ROA.169. He uprooted his life and left Sunset out of fear of what might happen, and he continues to “live with” that fear “every single day.” Doc. 57, at ¶ 18; ROA.203. He subsequently developed PTSD symptoms, and a medical professional opined that therapy would assist R.A. “in coping and dealing with the events of the crime for which he was a victim.” ROA.171. It is fair to require the perpetrator of that crime to absorb the cost of remedying the harm he inflicted.

4. The district court did not misstate the law, and any purported misstatement was harmless.

Padilla also contends that the district court erred when it “misstated” the law. Br. 23. He cites the transcript from the restitution hearing, which reads: “Pursuant to 18 U.S.C. § 3663A, the Court is required to enter a restitution order when a defendant is found to have committed a crime of violence in [sic] offense against property or [sic] where there’s an identifiable victim who suffers a physical injury or monetary loss.” ROA.191. As Padilla points out (Br. 23), the offense must be a crime of violence (or an offense against property) *and* a victim must have suffered a physical injury or pecuniary loss; the requirements are

not disjunctive. 18 U.S.C. 3663A(c)(1). It appears, however, that the word “or” in the transcript is simply a typographical error; the transcript also says that restitution is required when the defendant commits a “crime of violence in [sic] offense against property.” ROA.191. Presumably, “in” should be “an,” and the two offenses should be separated by an “or,” as crimes of violence and offenses against property are separate eligible offenses. *See* 18 U.S.C. 3663A(c)(1). It is likely that the “or” Padilla cites as the district court’s misstatement could similarly be a typo for “and.” This is not “clear” error warranting the exercise of this Court’s discretion, nor is it a basis for reversal. *See United States v. Perry*, 599 F. App’x 141, 142 (5th Cir. 2015) (concluding that error in presentence report was “clearly a typographical error” and was “not a basis for reversal”).

Regardless, any error was harmless. Padilla has never disputed that the victim suffered bodily injury; only, on appeal, that his offense was not a crime of violence. Because his Section 242 conviction was a crime of violence (*see* Section I.B, *supra*), and because any error did not affect his substantial rights (*see* Section I.C.2, *supra*; Fed. R. Crim. P. 52(a)), any purported misstatement was harmless.

II. The district court did not err in ordering Padilla to pay \$3,500 in restitution.

A. Standard of review

This Court applies “de novo review to a restitution award’s legality, and clear-error review to the factual findings underlying the award.” *United States v. Read*, 710 F.3d 219, 231 (5th Cir. 2012).

B. The district court did not err in awarding restitution for psychological care.

The MVRA’s mandate is clear: when the victim of a crime of violence suffers bodily injury, the district court “shall” order the defendant to pay restitution for the “cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care.” 18 U.S.C. 3663A(b)(2)(A). The court resolves any dispute “as to the proper amount or type of restitution” by a preponderance of the evidence. 18 U.S.C. 3664(e).

At the outset, Padilla appears to suggest that it is unclear whether the MVRA allows a court to order restitution for *future* medical care, as the district court did below. Br. 30-34. However, while noting that the issue is unclear, Padilla does not actually argue that the statute precludes such an order, and he states that this Court “need not decide” the issue. Br. 34. Accordingly, this Court need not decide the issue.

In any event, this argument is meritless. As an initial matter, Padilla argued below (as he does on appeal) that whether the victim would actually seek counseling was too speculative to warrant restitution for psychological care, but he did not argue that the statute precludes such an order. Doc. 76, at pp. 6-7; ROA.187 (“Under 3663A . . . there are losses that are more directly related to the injury. So there’s things like medical care, psychological care. Of course we concede that.”); *see also* ROA.189-190. Thus, he has waived this argument. *See AG Acceptance Corp. v. Veigel*, 564 F.3d 695, 700 (5th Cir. 2009) (“[A]rguments not raised before the district court are waived and will not be considered on appeal unless the party can demonstrate ‘extraordinary circumstances.’” (citation omitted)).

Additionally, nothing in the statute’s text limits an order to past expenses; to the contrary, the statute requires the court to “order restitution to each victim in the *full amount* of each victim’s losses.” 18 U.S.C. 3664(f)(1)(A) (emphasis added); *see also* 18 U.S.C. 3663A(b)(2)(A). And as Padilla recognizes (Br. 30), this Court has previously affirmed a district court’s order requiring a defendant to pay restitution for “future psychiatric or psychological care.” *United States v. Serrata*, 679 F. App’x

337, 339-340 & n.3 (5th Cir. 2017) (affirming restitution order for \$5,000 for victim whose “counselor had expressed a belief that [the victim] was suffering from posttraumatic stress disorder”).

Accordingly, Padilla pivots, instead asking this Court to veto the restitution award—which ordered Padilla to pay \$3,500 to the victim for therapy for the PTSD he developed from the incident (ROA.170-171, 192)—because, as Padilla sees it, “the victim has no intention of obtaining” future psychological treatment. Br. 34 (emphasis omitted). Padilla claims that the victim effectively defrauded the court by seeking restitution for psychological care, when he “was really seeking recovery for ‘pain and suffering.’” Br. 35; ROA.190. But this Court cannot reweigh the district court’s credibility determination, and the district court did not clearly err in finding that the victim’s desire for therapy was genuine.

First, the district court heard from the victim and witnessed the impact Padilla’s conduct had on him. The victim, R.A., submitted a written statement recounting the “nightmare” he experienced at the hands of Padilla. Doc. 57, at ¶ 18. R.A. described not only the physical pain and injury he suffered because of the incident, but also the “mental” and psychological pain. *Ibid.* He described the incident as “one of the

worst moments” of his life, explaining that he later moved from Sunset out of “fear” of Padilla. *Ibid.* R.A. noted that on “many” occasions, he has cried from “watching the video [of the incident] and having to relive” it. *Ibid.* He referred to the incident as a “haunting memory.” *Ibid.* Indeed, the experience was so traumatizing that R.A.’s wife, who was pregnant at the time she witnessed the incident, had a miscarriage. *Ibid.*

R.A. delivered a similar statement at Padilla’s sentencing hearing. ROA.202-203. He stated that his life has “forever changed” and that he “live[s] with this fear every single day,” as he still has to travel through Sunset “to bring [his] little boy to school,” and he continues to “worry about what other cops or what other people will take up for [Padilla] and finish what he started.” ROA.203. Before pronouncing Padilla’s sentence, the district court observed that R.A. “clearly is still emotional about what happened to him that day.” ROA.207.

Additionally, the district court heard from Dr. Lawrence Dilks, a practicing psychologist of 47 years, about R.A.’s need and desire for medical care. ROA.165. At the restitution hearing, Dr. Dilks testified that after reviewing the case and meeting with R.A., he concluded that R.A. exhibited PTSD symptoms due to the incident with Padilla. ROA.165-

168. Dr. Dilks noted that R.A. reported “a wide variety of symptoms typically associated with trauma,” including flashbacks, sleep disorder, depression, and more. ROA.169. Dr. Dilks did not have “any doubt” that R.A. was suffering from PTSD as a result of the incident and needed treatment, and Dr. Dilks confirmed that R.A. expressed that he “needs to talk to someone” about the incident. ROA.169. Dr. Dilks also stated that he believed therapy would be beneficial for R.A. ROA.171.

Dr. Dilks further noted that, nearly two years after the incident, R.A. “remains very disturbed emotionally about the incident.” ROA.167. Dr. Dilks observed that R.A. was “tearful and crying and had a hesitant speech” as the two discussed the incident, and that R.A. “found it very difficult, stressful to discuss the matter.” ROA.167. Dr. Dilks found R.A. genuine. ROA.167.

The testimony of a medical professional that R.A. was suffering from PTSD and genuinely desired treatment, coupled with R.A.’s own words and evident emotion about the impact of the offense, support the district court’s finding that R.A. was genuine in his desire for psychological treatment. Indeed, at the restitution hearing, the district court referenced R.A.’s “emotional distress” at the sentencing hearing,

expressly finding that it “lends to the credibility of what he told” Dr. Dilks. ROA.179. The district court was in the best position to determine whether R.A. genuinely sought therapy or, as Padilla contends, merely a payout. It found the former, and it did not clearly err in doing so. *See United States v. Reese*, 998 F.2d 1275, 1284 (5th Cir. 1993) (stating that this Court had “no problem with the trial court accepting the appraised value” of property done by an appraisal, “rather than the appraisal testimony offered by the defendants,” as that “is a credibility call, and the trial judge is in the best position to make that decision”); *United States v. Lopez*, 818 F. App’x 340, 344-345 (5th Cir. 2020) (rejecting defendant’s argument that testimony supporting restitution amount “was unreliable”; although defendant “attempted to impeach [the witness’s] credibility, the district court was entitled to, and evidently did, credit her testimony,” so its finding was not clearly erroneous).

Finally, Padilla takes issue with the district court’s conclusion that R.A.’s PTSD symptoms stemmed from Padilla’s assault. Br. 37-40. Padilla asserts that Dr. Dilks “failed to take into account evidence that the victim had suffered a prior trauma”—specifically, that R.A. had

previously been stabbed (Br. 38; ROA.175)—“which he conceded could have resulted in post-traumatic stress disorder.” Br. 37.

Under the MVRA, restitution is limited to loss “caused by [the defendant’s] offense of conviction.” *United States v. Mathew*, 916 F.3d 510, 517 (5th Cir. 2019). Dr. Dilks’s testimony established that R.A.’s need for psychological care was “caused by [Padilla’s] offense.” *Ibid.* Dr. Dilks expressly testified that R.A. experienced PTSD symptoms “related to the encounter with Mr. Padilla.” ROA.168. He testified that he “established that there were no other traumatic events in [R.A.’s] life that he could attribute this kind of an emotional reaction to.” ROA.168. Eliminating the possibility of other traumatic events allowed Dr. Dilks to “say with a degree of confidence that the emotions and the disturbances that [R.A.] noted to [him] today were due to the event that took place in 2023.” ROA.168.

Dr. Dilks also highlighted that R.A. “felt that at that particular time [during the incident with Padilla] he could be significantly injured,” and Dr. Dilks “witnessed that by [R.A.’s] reaction during the video.” ROA.169. Further, Dr. Dilks recounted his conversation with R.A. in which R.A. explained that after the incident with Padilla—not after the stabbing—

he moved from Sunset because “the fear was growing in him” about what might happen to him. ROA.169-170.

The district court specifically asked “how [Dr. Dilks could] link the emotional distress that [R.A.] has to this specific incident.” ROA.179. Dr. Dilks explained that he interviewed R.A. to “look[] for comorbidities and differential diagnosis to make sure that his presentation is not due to something else.” ROA.179. He explained that he asked R.A. “about previous trauma” and any history of depression and “went through [R.A.’s] medical history” to “rul[e] out” other possible causes. ROA.179-180. He noted that R.A. “denied having a history of sexual, physical[,] or emotional abuse.” ROA.180. Dr. Dilks confirmed that R.A.’s symptoms “were triggered post” the incident with Padilla. ROA.181. The district court found that Dr. Dilks’s testimony “was credible” and “established causation for the necessity of” R.A.’s treatment. ROA.192.

As to the stabbing, Dr. Dilks said that whether a stabbing would be a traumatic experience would “depend[] on the victim,” implying that it would not necessarily result in trauma. *See* ROA.175-176. In response to questioning by defense counsel as to whether “some people might get PTSD from being stabbed,” Dr. Dilks said, “I think it’s possible.”

ROA.176. But in his conversation with R.A., R.A. “did not indicate that he was traumatized by prior events.” ROA.176; *see also* ROA.177 (testifying that R.A. had “never had any major psychiatric symptoms” before). Further, R.A. “could not recall any particular incidents that he felt, as an individual, were traumatizing him.” ROA.176. So although Padilla asserts that R.A.’s PTSD symptoms stemmed from the stabbing and not his offense, R.A. said otherwise. Testimony that “it’s possible” that “some” people might get PTSD from being stabbed, “depend[ing] on the victim,” when the particular victim here explicitly disavowed having “any particular incidents” that “were traumatizing” other than the incident with Padilla (ROA.176), cannot establish that the district court clearly erred in finding that R.A.’s need for psychological treatment was “caused by [Padilla’s] offense of conviction.” *Mathew*, 916 F.3d at 517.

CONCLUSION

This Court should affirm Padilla's sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 12,996 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

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