

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

AMADOR CORTES-MEZA,

Defendant-Appellant

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

---

BRIEF FOR THE UNITED STATES AS APPELLEE

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, counsel for the United States as Appellee hereby certifies that the following persons and parties may have an interest in the outcome of this case:

████████████████████ (referred to as “BCA”)<sup>1</sup>, Victim

Brill, Gerrilyn G., United States Magistrate Judge

Chandler, Thomas E., Counsel for the United States

Coppedge, Susan, Former Counsel for the United States

Cortes-Meza, Amador, Defendant-Appellant

Flynn, Erin H., Counsel for the United States

Gupta, Vanita, Counsel for the United States

Horn, John, Counsel for the United States

████████████████████ (referred to a “LGI”), Victim

████████████████████ (referred to as “LMJ”), Victim

████████████████████ (referred to as “MVL”), Victim

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<sup>1</sup> In order to protect the identities of the trafficking victims in this case, see 18 U.S.C. 3771(a)(8), 22 U.S.C. 7105(c)(1), and Eleventh Circuit Rule 25-6(a)(3), on April 21, 2016, the United States filed with the Clerk a list of the victims’ full names in paper format and under seal. Opposing counsel has no objection to this treatment of the victims’ identities.

Case No. 11-11476-CC  
*United States v. Amador Cortes-Meza*

Maloney, Karima G., Former Counsel for the United States

Michaels, Sandra, Counsel for the Defendant-Appellant

████████████████████ (referred to as “MPM”), Victim

████████████████████ (referred to as “NHP”), Victim

████████████████████ (referred to as “RHP”), Victim

████████████████████ (referred to as “NMS”), Victim

████████████████████ (referred to as “AAS”), Victim

Sommerfeld, Lawrence R., Counsel for the United States

Story, Richard W., United States District Judge

United States of America, Plaintiff-Appellee

s/ Erin H. Flynn  
ERIN H. FLYNN  
Attorney

Date: June 24, 2016

## **STATEMENT REGARDING ORAL ARGUMENT**

The United States does not oppose appellant's request for oral argument.

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BRIEF FOR THE UNITED STATES AS APPELLEE

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**JURISDICTIONAL STATEMENT**

The district court had jurisdiction over this criminal matter under 18 U.S.C. 3231. The court entered final judgment on March 28, 2011. Doc. 367.<sup>1</sup> Two days later, defendant filed a notice of appeal (Doc. 368), which became effective upon the district court's denial of his motion for a new trial under Federal Rule of

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<sup>1</sup> "Doc.\_\_\_\_" refers to the docket entry number of documents filed in the district court. "Br.\_\_\_\_" refers to pages in defendant's opening brief. "GX-\_\_\_\_" refers to the government's trial exhibits.

Criminal Procedure 33 (Doc. 468). See Fed. R. App. P. 4(b)(3)(ii); see also Doc. 469 (second notice of appeal). This Court has jurisdiction under 18 U.S.C. 3742 and 28 U.S.C. 1291.

### **STATEMENT OF THE ISSUES**

1. Whether the district court abused its discretion in admitting victims' diary entries and related testimony.
2. Whether the district court abused its discretion in denying defendant's motions for a new trial.
3. Whether defendant's 480-month sentence is substantively unreasonable.

### **STATEMENT OF THE CASE**

#### *1. Proceedings Below*

On September 16, 2008, a federal grand jury returned a 34-count third superseding indictment charging defendant Amador Cortes-Meza (defendant or Cortes-Meza<sup>2</sup>) and five co-defendants—Francisco Cortes-Meza, Juan Cortes-Meza, Raul Cortes-Meza, Edison Wagner Rosa Tort, and Otto Jaime Larios Perez—with various offenses related to human trafficking and forced prostitution. Doc. 110. In particular, from spring 2006 until June 2008, Cortes-Meza and his co-defendant relatives operated a scheme in which they repeatedly recruited and

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<sup>2</sup> We refer to Amador Cortes-Meza as defendant or Cortes-Meza. Three co-defendants are Cortes-Meza's relatives and share the same last name. We refer to those co-defendants by their first and last names.

enticed female victims, some of whom were minors, to come to the United States from Mexico under false promises of a better life, legitimate employment, or marriage. The victims were smuggled across the border and transported to Atlanta, Georgia. Upon arriving in suburban Atlanta, they were forced to engage in prostitution. Doc. 110, at 2-17.

The indictment charged Cortes-Meza, the only defendant at issue on appeal, with 20 substantive crimes involving conspiracy, sex trafficking, and immigration-related violations:

- conspiring with co-defendants and others known and unknown to the government to commit four offenses against the United States: (1) sex trafficking by force, fraud, or coercion; (2) sex trafficking of a minor; (3) importing aliens for the purpose of prostitution; and (4) encouraging and inducing aliens to enter and reside in the United States, all in violation of 18 U.S.C. 371 (Count 1);
- sex trafficking of a minor, in violation of 18 U.S.C. 1591(a) (Counts 3 and 5);
- sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. 1591 (Counts 6 and 8);
- importing and harboring an alien for the purpose of prostitution, in violation of 8 U.S.C. 1328 (Counts 9-12 and 14-17);
- transporting a minor for prostitution, in violation of 18 U.S.C. 2423(a) (Count 21);
- conspiring with co-defendants Juan Cortes-Meza, Francisco Cortes-Meza, Raul Cortes-Meza, and Edison Wagner Rosa Tort to harbor aliens for

financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(v)(I) and 1324(a)(1)(B)(i) (Count 22)<sup>3</sup>; and

- bringing an alien into the United States through a non-designated point of entry, in violation of 8 U.S.C. 1324(a)(1)(A)(i) (Counts 23-25, 28, and 30).

Doc. 110, at 1-23.

Before trial, Cortes-Meza's five co-defendants pleaded guilty to various sex trafficking, conspiracy, and false statement offenses. In particular, Francisco Cortes-Meza pleaded guilty to one count of sex trafficking by force, fraud, or coercion (Doc. 167-1); Juan Cortes-Meza pleaded guilty to one count of sex trafficking of a minor and one count of importing an alien for purposes of prostitution (Doc. 207-1); Raul Cortes-Meza pleaded guilty to one count of sex trafficking of a minor (Doc. 177-1); Edison Wagner Rosa Tort pleaded guilty to conspiring to commit sex trafficking (Doc. 209-1); and Otto Jaime Larios Perez pleaded guilty to making a false statement to federal authorities (Doc. 208-1). The court sentenced co-defendants to the following prison terms: Francisco Cortes-Meza – 240 months (Doc. 233); Juan Cortes-Meza – 200 months (Doc. 251); Raul Cortes-Meza – 120 months (Doc. 254); Edison Wagner Rosa Tort – 60 months (Doc. 256); and Otto Jaime Larios Perez – 30 months (Doc. 258). The court also

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<sup>3</sup> On the government's motion, the district court dismissed Count 22 before trial. Doc. 383, at 23-24.

imposed supervised release, restitution to specified victims, and mandatory special assessments. Docs. 233, 251, 254, 256, 258.<sup>4</sup>

Cortes-Meza proceeded to trial in November 2010. After a ten-day trial, he was found guilty of all 19 counts submitted to the jury. Doc. 352. Two days before sentencing, Cortes-Meza filed a motion for a new trial under Federal Rule of Criminal Procedure 33 based on newly discovered evidence; in the alternative, he requested that the court postpone sentencing and hold an evidentiary hearing on his motion. Docs. 363-364. With the parties' consent, the court proceeded to sentencing, taking both the motion and the request for an evidentiary hearing under advisement. Doc. 392, at 3-13.

At sentencing, the court calculated Cortes-Meza's total offense level as 45, his criminal history category as I, and his advisory Guidelines sentence as life imprisonment. Doc. 392, at 22. The court then imposed a below-Guidelines prison sentence of 480 months on the sex trafficking counts, 120 months on the immigration-related counts, and 60 months on the conspiracy count, all to run concurrently. Doc. 392, at 79. The court also imposed five years of supervised

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<sup>4</sup> Francisco Cortes-Meza and Juan Cortes-Meza appealed from their sentences. This Court affirmed in part and dismissed in part, holding that their above-Guidelines sentences were valid and that the terms of their plea agreements barred their remaining arguments. See *United States v. Cortes-Meza*, 411 F. App'x 284 (11th Cir. 2011) (unpublished opinion) (Doc. 361).



release, \$292,000 in restitution to eight victims, and the mandatory special assessment. Doc. 392, at 79-80; Doc. 367 (Judgment).

After sentencing, Cortes-Meza filed a second motion for a new trial and evidentiary hearing based on the same newly discovered evidence. Doc. 380. The court granted defendant's request for limited discovery and authorized counsel, an interpreter, and a court reporter to travel to Mexico to depose the witness whose affidavit formed the basis for the motions. Docs. 420, 445-447. Following an evidentiary hearing, the court denied both motions. Doc. 468.

On appeal, Cortes-Meza challenges one evidentiary ruling, the denial of his Rule 33 motions, and the imposition of a 480-month sentence. Br. 16-31. Cortes-Meza remains incarcerated pending appeal.

## 2. *Cortes-Meza's Sex Trafficking Scheme*

At trial, nine female victims—LMJ, MVL, BCA, AAS, LGI, NHP, NMS, MPM, and RHP<sup>5</sup>—testified about defendant's central role in a years-long sex trafficking and prostitution ring. The evidence showed that from spring 2006 until

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<sup>5</sup> Consistent with the charging documents, presentence investigation report (PSR), and judgment, we identify the victims by their initials. At trial, the victims identified themselves using a partial version of their full name. In their testimony, they often referred to each other by their first names or "work" names. For the Court's convenience, we have included a table that lists the victims' initials, partial names, and "work" names, as well as citations to their testimony. See Attach. Tbl. 1. We also have included a table of the 19 counts submitted to the jury that reflects for each count the relevant victim, verdict, statutory minimum and maximum sentence, Guidelines sentence, and sentence imposed. See Attach. Tbl. 2.

June 2008, defendant, acting in concert with his brother (Juan Cortes-Meza), nephews (Francisco Cortes-Meza and Raul Cortes-Meza), and other co-conspirators, lured, enticed, compelled, and coerced young Mexican women and girls, including some minors, to travel with them to the United States, where defendants then forced the women and girls into prostitution. Abundant physical evidence and testimony by case agents and treating physicians corroborated the victims' testimony.<sup>6</sup>

The operation came to the attention of federal authorities in 2008, during an Immigration and Customs Enforcement (ICE) investigation into another presumed sex trafficking and prostitution ring. Doc. 394, at 830-834. In conjunction with that investigation, ICE agents conducted a traffic stop of co-defendant Tort (Caruso) in January 2008. Doc. 394, at 834. When they stopped Caruso, LMJ was in the car; Cortes-Meza had loaned her to Caruso to work at his brothel. Doc. 393, at 395-398; Doc. 394, at 834. ICE agents arrested Caruso and removed LMJ from his custody and control, referring her to a victim services organization. Over the

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<sup>6</sup> During closing argument, in focusing his defense on the conspiracy and sex-trafficking counts, Cortes-Meza conceded that the jury could find him guilty of the thirteen immigration-related offenses (Counts 9-12, 14-17, 23-25, 28, and 30). Doc. 411, at 36-37; PSR Attach. 1; Br. 9. On appeal, Cortes-Meza does not challenge the verdict or his 120-month sentence on those counts. Thus, we focus primarily on the facts relevant to his remaining six convictions for conspiracy and sex trafficking (Counts 1, 3, 5, 6, 8, and 21).

course of the next several months, LMJ identified numerous suburban Atlanta residences at which Mexican females were being housed for prostitution purposes. Doc. 394, at 834-836. Although LMJ first said that Caruso had been prostituting her, she ultimately implicated Cortes-Meza and his co-defendant relatives in an extensive sex-trafficking scheme, explaining that she initially lied out of fear that Cortes-Meza would hurt her and her family. Doc. 393, at 398-400; Doc. 386, at 501-502; Doc. 394, at 836-837.

In late May 2008, local authorities, acting on information from ICE, conducted a traffic stop of co-defendant Perez. Doc. 394, at 839; Doc. 395, at 1120. MVL was also in the car. Doc. 394, at 840. Local police arrested Perez and referred MVL to ICE for questioning. Doc. 394, at 844-845. The information that MVL provided to ICE corroborated LMJ's statements and was consistent with its surveillance of the identified homes. Doc. 394, at 837, 845-846. ICE referred MVL to a victim services organization for housing and assistance. Doc. 394, at 870; Doc. 395, at 1120-1124.

Subsequently, in June 2008, ICE agents raided two homes identified by LMJ. Doc. 385, at 282-298; Doc. 387, at 799; Doc. 394, at 837-839, 846. At one home, they found defendant with three female victims. Doc. 385, at 299; Doc. 387, at 800. At the other home, they found co-defendants Francisco Cortes-Meza and Raul Cortes-Meza with four female victims. Doc. 387, at 814-815. Later that

day, ICE apprehended co-defendant Juan Cortes-Meza and a final female victim, MMB, at a gas station. Doc. 387, at 802-805; Doc. 394, at 859-860.

All of the men were arrested; the women, some of whom were minors, were taken to ICE offices for questioning. On the basis of their initial and subsequent interviews, ICE determined that the women were sex-trafficking victims and referred them to a victim services organization. Doc. 394, at 847-848, 869-874, 877; Doc. 388, at 1045-1066. Although all of the victims were in the United States illegally, ICE arranged for temporary legal status and work authorization for them based on their victim status. Doc. 394, at 845, 870-878; Doc. 388, at 1068-1071.

At trial, the victims' testimony described the *modus operandi* of the criminal enterprise. Defendant and his relatives recruited young, uneducated women and minor girls from impoverished areas of Mexico and used promises of love, marriage, and the opportunity for a better life to separate the victims from their families and entice them to enter the United States illegally. The men made arrangements with smugglers to transport each victim across the border from Mexico into Arizona and then to Georgia. Once they arrived in Georgia, Cortes-Meza and his co-defendant relatives harbored the victims in Atlanta-area homes. The men also lived in the homes, typically splitting time between the different residences. Doc. 384, at 87-123 (RHP); Doc. 385, at 307-333 (LMJ); Doc. 386, at 511-530 (BCA); Doc. 386, at 560-580, 620-623 (NMS); Doc. 387, at 709-731

(AAS); Doc. 395, at 1086-1107 (MVL); Doc. 395, at 1169-1178 (MPM); Doc. 389, at 1205-1217 (LGI); Doc. 389, at 1234-1249 (NHP).

Cortes-Meza and his relatives controlled all aspects of the victims' lives. Through a combination of deception, fraud, coercion, threats, physical violence, and intimidation, they compelled the victims, including the minors, to engage in prostitution and turn over virtually all of their proceeds to them. Doc. 384, at 123-126, 153, 173-175 (RHP); Doc. 385, at 334-338 (LMJ); Doc. 386, at 624-628 (NMS); Doc. 387, at 732-734, 744-745 (AAS); Doc. 395, at 1107-1108 (MVL); Doc. 389, at 1217-1220 (LGI).

The victims were forced to work in a delivery-style prostitution business. Each night, drivers would transport the victims to customers' residences where they would perform sexual services. The victims testified that they usually served between 10 and 30 customers a night at a rate of \$25 to \$30 per customer.<sup>7</sup> The drivers, who included several co-defendants, kept \$10-15 per customer; Juan Cortes-Meza, Francisco Cortes-Meza, or defendant took the remaining \$15. Doc. 384, at 126-132 (RHP); Doc. 385, at 339-342 (LMJ); Doc. 386, at 583-586, 590-591 (NMS); Doc. 387, at 737-740 (AAS); Doc. 395, at 1110 (MVL); Doc. 395, at

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<sup>7</sup> Only BCA, a minor who had just arrived in the United States, did not engage in prostitution. She testified that she was to begin prostituting the day that ICE conducted its raid. Doc. 386, at 529-533 (BCA); see also Doc. 386, at 604-605 (NMS); Doc. 387, at 748-749 (AAS).

1182-1183 (MPM); Doc. 389, at 1218-1219 (LGI); Doc. 389, at 1251-1252 (NHP). Under this scheme, Cortes-Meza and his relatives made thousands of dollars, while the victims received next to nothing. Doc. 393, at 390-394 (LMJ); Doc. 386, at 590, 628, 631 (NMS); see also Doc. 384, at 167-172 (RHP); Doc. 387, at 740-744 (AAS); Doc. 395, at 1117-1119 (MVL).

The evidence revealed Cortes-Meza's central role in the sex-trafficking scheme. Most victims testified that Cortes-Meza was the overall boss, or "[gran] padrote." Doc. 384, at 132-135, 193-194 (RHP); Doc. 385, at 343, 347 (LMJ); Doc. 395, at 1186-1187 (MPM); Doc. 389, at 1254, 1265-1266 (NHP). Some victims testified that Cortes-Meza used force, fraud, and coercion to compel them to engage in prostitution, and that they feared grave consequences for failing to comply. Doc. 384, at 142, 148-149, 175 (RHP); Doc. 385, at 347-356 (LMJ); Doc. 393, at 390-394 (LMJ); Doc. 386, at 610, 618-619 (NMS); Doc. 387, at 746 (AAS); Doc. 395, at 1113-1114 (MVL); Doc. 395, at 1188 (MPM); Doc. 389, at 1258-1271 (NHP). One minor victim testified that she complied because she was afraid and disoriented from being in a new country and because she had romantic feelings for defendant, which defendant encouraged. Doc. 386, at 580-583, 591 (NMS). The victims recounted beatings, threats of beatings, threats to harm their family members, close supervision, isolation, intimidation, and verbal abuse. Doc. 384, at 142, 148-149, 153-166, 175, 187-188 (RHP); Doc. 385, at 347-356, 360-

361 (LMJ); Doc. 393, at 371-383 (LMJ); Doc. 386, at 592-597, 607-610 (NMS); Doc. 387, at 746-753 (AAS); Doc. 395, at 1114-1116 (MVL); Doc. 395, at 1183-1184, 1187-1188 (MPM); Doc. 389, at 1249-1252, 1257-1259, 1266-1272 (NHP).

In each home they searched, ICE agents found notebooks that contained driver phone numbers, ledgers of transactions, and diary entries. Doc. 394, at 865; see also Doc. 384, at 182-183; Doc. 386, at 584-586; Doc. 389, at 1253-1254. They also found, among other things, receipts for money transfers to Mexico; cell phones; apartment leases, bills, and other documents in defendant's name; and large quantities of condoms and other prostitution-related paraphernalia. Doc. 385, at 283-298; Doc. 387, at 808-817; Doc. 394, at 853-855, 861-869, 878, 885.

### **SUMMARY OF ARGUMENT**

Cortes-Meza challenges only six of the 19 counts on which he was convicted: conspiracy (Count 1); sex trafficking of a minor (Counts 3 and 5); sex trafficking by force, fraud, or coercion (Counts 6 and 8); and transporting a minor for prostitution (Count 21). In connection with these counts, Cortes-Meza challenges the district court's admission of four victims' diary entries and related testimony, its denial of his motions for a new trial based on newly discovered evidence, and its imposition of a 480-month sentence on the sex-trafficking counts. Because none of Cortes-Meza's arguments warrant disturbing his convictions and sentence, this Court should affirm.

1. The court did not abuse its discretion in admitting four victims' diary entries and related in-court testimony. For certain conspiracy and sex-trafficking counts (Counts 1, 6, and 8), the government was required to prove force, fraud, or coercion. The diary entries were probative of how defendant accomplished his scheme and helped to establish this element. The victims penned the entries while under defendant's control; their poems, prayers, and personal affirmations were not offered for the truth of the matter asserted therein but rather as evidence of the victims' state of mind, including their feelings of helplessness, lack of freedom, and vulnerability to Cortes-Meza's manipulation.

The diary entries were relevant evidence under Federal Rule of Evidence 401 and did not constitute hearsay under Rule 801(c). Moreover, some specific excerpts were offered to prove a victim's then-existing state of mind, making them admissible under Rule 803(3). Finally, because defendant asserted that the victims had recently fabricated claims of forced prostitution to secure lawful immigration status, the diary entries could be admitted under Rule 801(d)(1)(B) as prior consistent statements to rebut those assertions of recent fabrication.

In addition, the court properly allowed the victims to testify about why they wrote in their diaries and what certain passages reflected about their feelings at that time. The victims' testimony was non-hearsay, adduced under oath and in the presence of the jury, and subject to cross-examination. Defendant had ample



opportunity to cross-examine each victim about her account of any diary entry, any inconsistency between her account and the entry's text, and her memory of the events that triggered the entry.

Finally, defendant argues for the first time on appeal that the victims' diaries and related testimony constituted Rule 404(b) evidence of prior bad acts. To the contrary, the evidence was intrinsic and relevant to the charged conspiracy and sex-trafficking offenses and showed force, fraud, or coercion, as required under Counts 1, 6, and 8.

2. Cortes-Meza has not shown that the court abused its discretion in denying his Rule 33 motions for a new trial based on newly discovered evidence. Cortes-Meza's motion was based on evidence from MMB, a victim who returned to Mexico in early 2009 and was a minor during the relevant time period and thus could not consent to prostitute. According to defendant, MMB would testify that the other victims had colluded to fabricate a story about forced prostitution, the ICE agents had withheld temporary legal status and work authorization from her in an attempt to pressure her to adopt the other victims' story, and the government had kept her from testifying at trial despite her desire to do so.

Even assuming that such evidence was new and that defendant could not have discovered it with due diligence, the court properly determined that MMB's testimony did not warrant a new trial. Apart from lacking credibility, MMB's

testimony (a) was merely cumulative or impeaching; (b) was immaterial to defendant's convictions on the immigration-related offenses on which he conceded guilt (Counts 9-12, 14-17, 23-25, 28, and 30); (c) was immaterial to defendant's convictions on offenses that did not require proof of force, fraud, or coercion (Counts 1, 3, 5, and 21); and (d) was unlikely to produce a different result on the remaining charges that did require proof of force, fraud, or coercion (Counts 6, 8, and one basis for Count 1). The court was familiar with the trial record and well positioned to assess both the relevance and potential impact of MMB's testimony. After examining the evidence in light of the entire record, the court did not abuse its discretion by denying both motions.

3. Finally, Cortes-Meza has not shown that his below-Guidelines 480-month sentence on the five sex-trafficking counts (Counts 3, 5, 6, 8, and 21) is substantively unreasonable. In discussing the sentencing factors set forth under 18 U.S.C. 3553(a), the district court specifically addressed the disparity between defendant's sentence and the sentences of Francisco Cortes-Meza and Juan Cortes-Meza, explaining that defendant's significantly longer sentence reflected the seriousness of his offense conduct, including his years-long prostitution of the victims, his violence and infliction of permanent physical injuries, his leadership role in the enterprise, his victims' vulnerability, and his repeated decision to subject his victims to dangerous risks. The court also explained that defendant's

sentence had to send a clear message to him and others that such cruel and inhumane treatment would not be tolerated.

## **ARGUMENT**

### **I**

#### **THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING FOUR VICTIMS' DIARY ENTRIES AND RELATED TESTIMONY AS RELEVANT EVIDENCE OF CORTES-MEZA'S USE OF FORCE, FRAUD, AND COERCION TO PROSTITUTE THE VICTIMS**

##### *A. Standard Of Review*

The district court's evidentiary rulings are reviewed for abuse of discretion; even where a ruling is erroneous, this Court reverses only if the ruling "resulted in a substantial prejudicial effect." *United States v. Samaniego*, 345 F.3d 1280, 1282 (11th Cir. 2003) (citation omitted); see also *United States v. Belfast*, 611 F.3d 783, 816 (11th Cir. 2010) ("[W]here an error had no substantial influence on the outcome, and sufficient evidence uninfected by error supports the verdict, reversal is not warranted." (citation omitted)).

##### *B. The District Court's Evidentiary Ruling*

Before trial, defendant filed a motion in limine objecting to the introduction of victims' diary entries containing prayers, poems, and writings that the victims made while engaged in prostitution and living under defendant's control. Doc. 319, at 1-2. Defendant argued that the entries were inflammatory and prejudicial,

not relevant to or probative of the offenses charged, and inadmissible under Federal Rules of Evidence 401 to 403. Doc. 319, at 2.

The district court held a hearing on the motion. Doc. 383, at 2. In response to defendant's argument that the diary entries were irrelevant, the government explained that the victims' state of mind was at issue because, at least as to certain offenses, the government had to show that the victims were forced or coerced into prostitution. Doc. 383, at 56-57. Counsel thus explained that the victims' "state of mind with respect to fear, how they are feeling, a desire to leave, a plan for escape, those are all highly relevant to the charges that the government has to prove." Doc. 383, at 57. Counsel also explained that, to the extent defendant challenged the victims' assertions that they felt forced or coerced into prostitution, the evidence also was admissible as prior consistent statements to refute any charge of recent fabrication. Doc. 383, at 57-58.

Cortes-Meza argued that if the court was going to admit a victim's diary entries, it should admit the victim's entire notebook, including any driver names and phone numbers, doodles and drawings, and other information. Doc. 383, at 50-51. The court denied defendant's motion in limine (Doc. 326), but explained that if at trial it admitted a victim's diary entries, it would admit her entire notebook. Doc. 383, at 58.

During his opening statement, defendant emphasized that the jury should pay particular attention to whether Cortes-Meza forced the women to do something they were not already going to do, and whether they had a motive to claim they were sex-trafficking victims in order to remain in the United States to work and go to school. Doc. 410, at 19-24. Before the first witness testified, defendant asked for clarification on the court's ruling as to the diary entries, again arguing that they were irrelevant and prejudicial. Doc. 384, at 75-76. The court responded that the evidence was relevant to the government's showing of force, fraud, or coercion. Doc. 384, at 76. The government also responded that, based on defendant's opening statement that the women were willing prostitutes who falsely claimed to be victims to secure lawful immigration status, the diary entries were "prior consistent statements" and "present tense [sic] impressions of what they were going through." Doc. 384, at 79. The government explained that the fact that some victims prayed as a means of coping with their present circumstances was highly relevant, not prejudicial, and refuted the defense's theory. Doc. 384, at 79-80. The court again overruled defendant's objection, explaining that, although it had not yet seen the evidence, it likely was admissible under Rules 803(1) and 803(3). Doc. 384, at 81.

During trial, the government introduced the diary entries of four testifying victims:

RHP. RHP identified her diary entries (GX-107), including prayers and affirmations, and testified that she wrote them to express her feelings because Cortes-Meza often beat her when she spoke to the other victims. Doc. 384, at 195-196. She explained that she wrote about wanting to find a job where she could realize her potential and where her family would not be in need, and about feeling deceived, destroyed, and compromised by Cortes-Meza. Doc. 384, at 197. This evidence corroborated RHP's testimony that Cortes-Meza exercised extensive control over her and forced her into prostitution and that she felt unable to escape. Doc. 384, at 84-208; see also pp. 46-48, *infra*. Defendant extensively cross-examined RHP in an attempt to show that she was self-interested and only claimed to be a victim once caught and facing deportation. Doc. 385, at 234-257. The transcript of RHP's testimony is 176 pages; only six pages involve her diary entries. Doc. 384, at 195-200.

LMJ. LMJ read a diary entry about needing the Lord's help "to go forward with this torture" and "to endure this torture that I carry." Doc. 385, at 355; GX-155.<sup>8</sup> LMJ testified that when she spoke of "torture," it was "because being a

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<sup>8</sup> Although Cortes-Meza objected during trial to the admission of RHP's, NMS's, and NHP's diary entries, he did not object to the admission of LMJ's notebook. Doc. 385, at 353-354; but see Doc. 385, at 355-356 (objecting to LMJ's related testimony). Thus, the admission of LMJ's diary entries is reviewed for plain error. See *United States v. Turner*, 474 F.3d 1265, 1275-1276 (11th Cir. 2007) (a defendant must show an error that is plain and affects substantial rights

prostitute is a torture.” Doc. 385, at 355. In another entry, LMJ wrote that she was “full of joy and happiness that today may happen something very important in my life. Thanks to you, my god.” Doc. 385, at 355. LMJ testified that, when she wrote that, she “just wanted to move away from” defendant but could not “because he was there.” Doc. 385, at 356. The entries corroborated LMJ’s testimony that defendant closely supervised the victims, regularly beat her and forced her to engage in prostitution, and threatened to harm her and her family if she ever left. Doc. 385, at 334-361; Doc. 393, at 367-401; see also pp. 43-45, *infra*. Defendant cross-examined LMJ in an attempt to show that she engaged in prostitution voluntarily and implicated Cortes-Meza in order to obtain immigration benefits and because she was jealous of his relationships with other girls. Doc. 393, at 402-449; Doc. 386, at 463-496. The transcript of LMJ’s testimony is 129 pages; only three pages involve her diary entries. Doc. 385, at 353-356.

NMS. NMS, a minor, read an entry from her diary about “two roads in this world: life’s and death’s,” explaining that she wrote it after trying to kill herself. Doc. 386, at 598-599; GX-65. NMS testified that she attempted suicide because she could not have what she wanted for her life—“I was dreaming to going to school, be happy, and have somebody for real love me.” Doc. 386, at 599. NMS

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(. . . continued)

before this Court may exercise its discretion to notice the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings).

also read the following passage: “You feel love towards a person that does not feel the same as you. To die a thousand times for love even though people may not realize it. They feel sorry, disgust, shame for you, for the simple fact of being fat.” Doc. 386, at 599. NMS explained that she wrote that “because [defendant] told me that I was fat and I don’t have any value for anybody in this world.” Doc. 386, at 599. This corroborated NMS’s testimony about defendant’s mistreatment of her and her feelings of helplessness. Doc. 386, at 580-642. It also showed Cortes-Meza’s ability to capitalize on NMS’s vulnerabilities and refuted his assertions that the female victims—some of whom were minors like NMS—were willing prostitutes. Defendant specifically cross-examined NMS about additional diary entries that included drawings, poems, and prayers. Doc. 389, at 692-697; GX-76. The transcript of NMS’s testimony is 142 pages; only nine pages involve her diary entries. Doc. 386, at 597-599; Doc. 387, at 692-697.

NHP. NHP testified that she wrote in her diary when she felt sad; she read a passage that stated that “Today I felt very sad. I always feel alone. But the only thing that would help me was to write, as a means of release.” Doc. 389, at 1261; GX-124. She continued: “But even then, it was the same. I never felt happy, but even though I was happy sometimes when I went shopping, there I felt that people were looking at me. I tried to see how it was. Although sometimes happiness is not happiness.” Doc. 389, at 1261-1262. The government did not question NHP



further about her diary or that specific entry. Doc. 389, at 1261-1262. NHP's diary entry corroborated her testimony about feeling isolated and helpless. Doc. 389, at 1250-1260. Defendant cross-examined NHP, highlighting inconsistencies in her statements to ICE and a love letter that she had written to Francisco Cortes-Meza. Doc. 389, at 1284-1302. The transcript of NHP's testimony is 68 pages; only two pages involve her diary entries. Doc. 389, at 1260-1261.

*C. The District Court Did Not Abuse Its Discretion By Admitting Diary Entries And Related Testimony And, In Any Event, The Evidence Did Not Have A Substantial Prejudicial Effect Or Affect Defendant's Substantial Rights*

Cortes-Meza argues that the court abused its discretion in admitting four victims' diary entries because the evidence was "improper, irrelevant and prejudicial self-serving bolstering of the witnesses." Br. 14; see also Br. 16-20. Defendant further argues that the witnesses should not have been allowed to explain why they made certain diary entries or what those entries meant. Br. 19-20. For the first time, Cortes-Meza also argues that the admission of the diaries and related testimony allowed the government to introduce evidence of prior bad acts without proper notice under Rule 404(b). Br. 19. Defendant's arguments fail.

1.a. The court did not abuse its discretion in admitting four victims' diary entries. The victims' writings, poems, and personal affirmations were relevant evidence of the charged conspiracy and sex-trafficking offenses under Federal Rule of Evidence 401 and did not constitute hearsay under Rule 801(c). Moreover,

where the government offered a specific entry to show a victim's then-existing state of mind, the evidence was admissible under Rule 803(3). Finally, the diary entries refuted defendant's assertions that the victims voluntarily engaged in prostitution and thus were admissible as prior consistent statements under Rule 801(d)(1)(B).

As an initial matter, the diary entries were not hearsay. Hearsay is a statement, other than one made by the declarant while testifying at a trial or hearing, offered in evidence "to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c). The vast majority of the diary entries, including the victims' poems and affirmations, were not offered to prove the truth of the matter asserted in the statement—that is, RHP's goal of realizing her potential, a prayer's ability to provide LMJ strength, or NMS's weight. Rather, the diary entries were offered as relevant evidence to show each victim's state of mind at times relevant to the charged offenses, defendant's control over the victims, their isolation and lack of freedom, and their vulnerability to defendant's manipulation, all facts of consequence in determining whether defendant used force, fraud, or coercion in prostituting the victims (Counts 1, 6, and 8). See Fed. R. Evid. 401 (evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action"); cf. *United States v. Valas*, No. 15-50176, 2016 WL

2956906, at \*10 (5th Cir. May 20, 2016) (journal entry reflected “[victim’s] experience as a prostitute—an experience that she testified about”).

Second, where the government offered a specific statement of the victim’s feelings or emotions within any particular diary entry in order to prove the truth of the matter asserted therein, the evidence was properly admitted under Rule 803(3). Under that rule, a party can offer a “statement of the declarant’s then-existing state of mind” or “emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed.” Fed. R. Evid. 803(3). For such evidence to be admitted, the declarant’s state of mind must be relevant to some issue in the case. See *United States v. Veltmann*, 6 F.3d 1483, 1493 (11th Cir. 1993).

Here, the victims’ state of mind directly related to the charged conspiracy and sex-trafficking offenses (Counts 1, 6, and 8)—that is, that defendant conspired to and did use force, fraud, or coercion, including physical abuse, intimidation, isolation, and psychological manipulation, to cause the victims to prostitute. The victims penned the diary entries during the time period charged in the Indictment and the diary entries reflected their then-existing emotions. Because the victims’ state of mind was relevant to the government’s case against Cortes-Meza, the diary entries were admissible under Rule 803(3).

Finally, the evidence was admissible as a prior consistent statement. Under Rule 801(d)(1)(B), a witness's prior statement is not hearsay where the witness testifies and is subject to cross-examination about such statement, and the statement "is consistent with the [witness's] testimony and is offered" either "to rebut an express or implied charge that the witness recently fabricated it or acted from a recent improper influence or motive in so testifying" or "to rehabilitate the declarant's credibility as a witness when attacked on another ground." Fed. R. Evid. 801(d)(1)(B); see also *Tome v. United States*, 513 U.S. 150, 156-160, 115 S. Ct. 696, 700-702 (1995) (discussing Rule 801(d)(1)(B)'s application).

In his opening statement, Cortes-Meza suggested that the victims had fabricated stories of forced prostitution in order to secure beneficial immigration status and thus had acted from a recent improper influence or motive in so testifying. Doc. 410, at 19-24. Accordingly, the government could offer prior statements consistent with the victims' testimony to rebut defendant's charge that they had acted from a recent improper motive in testifying that they were forced into prostitution. The diary entries refuted defendant's theory that the victims had engaged willingly in prostitution and had claimed otherwise only after coming into contact with federal authorities and facing the prospect of deportation. See *Belfast*, 611 F.3d at 817 (defendant's opening statement and cross-examination regarding victim-witnesses' motive to lie opened door to use of prior consistent statement).

b. The court did not abuse its discretion in allowing the victims to testify about why they kept diaries and what certain entries reflected about their feelings at that time. Just as the victims could identify and testify about other documentary and physical evidence relevant to the conspiracy and sex-trafficking charges—such as cell phones, wire transfer receipts, lists of driver names and telephone numbers, and large quantities of condoms and other sex-related products—there was no prohibition on their in-court ability to identify notebooks as their own, describe what they wrote in their notebooks and why, and state how they felt living under defendant’s control. None of this testimony, which was under oath, in the presence of the jury, and subject to cross-examination, was improper.

Contrary to defendant’s suggestion, RHP’s, LMJ’s, and NMS’s testimony about why they wrote certain diary entries or the meaning of particular statements did not run afoul of Rule 803(3). This Court has stated that Rule 803(3) “does not permit the witness to relate any of the declarant’s statements as to why he held the particular state of mind, or what he might have believed that would have induced the state of mind.” *Samaniego*, 345 F.3d at 1282 (quoting *United States v. Cohen*, 631 F.2d 1223, 1225 (5th Cir. 1980)). Yet, when this Court stated in *Samaniego* that the witness may not relate the declarant’s statements as to why he held a particular state of mind, it did so in the context of a witness who was not the declarant. See *id.* at 1281-1283 (citing *Cohen*, 631 F.2d at 1225 (same)). This

Court explained that excluding such testimony was necessary “to avoid the virtual destruction of the hearsay rule which would otherwise result from allowing state of mind, provable by a hearsay statement, to serve as the basis for an inference of the happening of the event which produced the state of mind.” *Id.* at 1283 (quoting Fed. R. Evid. 803(3) advisory comm. notes, 1972 proposed rules). Defendant cites cases arising in this same context. See Br. 20 (citing *United States v. Lentz*, 282 F. Supp. 2d 399, 411-425 (E.D. Va. 2002), and *United States v. Joe*, 8 F.3d 1488, 1492-1493 (10th Cir. 1993)).

Here, unlike a witness who testifies at trial about someone else’s state of mind and why the person held that state of mind, the victims testified about their own diary entries. The victims’ *in-court statements* were not hearsay. See Fed. R. Evid. 801(c). For this reason, Rule 803(3), an exception to the hearsay rule, does not apply to the victim testimony that defendant challenges. Indeed, defendant had ample opportunity to cross-examine each victim about her in-court description of a particular diary entry, whether that description was consistent with the entry’s text, and whether she could remember the events that triggered the entry. Accordingly, this case presents none of the hearsay concerns that were at issue in *Samaniego* and similar cases.

2. Cortes-Meza also argues that the diary entries constituted impermissible evidence of prior bad acts under Rule 404(b). Br. 14, 19. Because defendant did

not raise this objection at trial, this Court reviews only for plain error. See *United States v. Edouard*, 485 F.3d 1324, 1343 (11th Cir. 2007). There was no error, much less plain error that affected defendant's substantial rights.

Rule 404(b) has no application here. Conduct that is intrinsic to a charged offense—*i.e.*, part and parcel of the offense conduct—does not constitute a “crime, wrong, or other act” for purposes of Rule 404(b) or its notice requirements. See Fed. R. Evid. 404(b) advisory comm. notes, 1991 amends. (“The amendment does not extend to evidence of acts which are ‘intrinsic’ to the charged offense.”). Indeed, this Court has stated that “[r]elevant direct evidence of a crime charged is always admissible unless it falls under a rule of exclusion,” and that “intrinsic evidence” is admissible if it is “necessary to complete the story of the crime” or “inextricably intertwined with the evidence regarding the charged offense.” *United States v. Troya*, 733 F.3d 1125, 1131 (11th Cir. 2013) (citation omitted), cert. denied, 135 S. Ct. 2048 (2015). “Evidence is inextricably intertwined if it is an integral and natural part of the witness’s accounts of the circumstances surrounding the offense for which the defendant was indicted.” *Ibid.* (citation and internal quotation marks omitted).

Here, the victims’ diary entries and related testimony reflected their experiences living with defendant during the time period charged in the Indictment and supported the government’s prosecution of Cortes-Meza for sex trafficking

and conspiracy. The diaries were offered as evidence of the charged crimes, not to show defendant's bad character, prior consistent conduct, or other crimes. The evidence helped to establish force, fraud, or coercion, which the government had to prove for the jury to convict on two of the sex-trafficking offenses (Counts 6 and 8) and conspiracy to commit sex trafficking by force, fraud, or coercion (Count 1). Doc. 352, at 1-3 (Verdict).

3. Finally, even if the diary entries and related testimony were improperly admitted, the court's admission of this evidence as to RHP, NMS, and NHP did not "result[ ] in a substantial prejudicial effect." *Samaniego*, 345 F.3d at 1282 (citation omitted). Nor has defendant shown that the admission of LMJ's diary entries or the failure to evaluate the evidence in light of Rule 404(b) affected his "substantial rights." *Edouard*, 485 F.3d at 1343 n.7. Indeed, Cortes-Meza has not explained how such evidence substantially prejudiced his trial on the sex-trafficking counts, let alone the other offenses. See Br. 17.

The diary entries had no bearing on the vast majority of convicted offenses. They played no role in Cortes-Meza admitting guilt on the immigration-related offenses (Counts 9-12, 14-17, 23-25, 28, and 30). They also had no effect on his conspiracy conviction (Count 1). The jury found defendant guilty of conspiring to commit four offenses: (1) sex trafficking of minors; (2) sex trafficking by force, fraud, or coercion; (3) importing aliens for prostitution; and (4) encouraging and



inducing aliens to enter and reside in the United States. Doc. 352, at 1. The diary entries had nothing to do with three of the four bases for the jury's verdict.

Likewise, the jury did not need to find force, fraud, or coercion to find defendant guilty of sex trafficking of a minor (Counts 3 and 5), see 18 U.S.C. 1591, or transporting a minor for prostitution (Count 21), see 18 U.S.C. 2423(a). Thus, the evidence could not have had a substantial prejudicial effect on those counts.

As for Counts 6 and 8—sex trafficking of LMJ and RHP by force, fraud, or coercion—the victims' diary entries comprised only a small part of each witness's testimony and an even smaller fraction of the overall evidence of Cortes-Meza's guilt. Based on the entire record, including LMJ's and RHP's testimony and their permanent physical injuries, the corroborating testimony of other victims, the other documentary and physical evidence, and the fact that defendant profited considerably while LMJ and RHP had next to nothing to show for their years-long prostitution, Cortes-Meza has not shown that the court's ruling had a substantial prejudicial effect (Count 8/RHP) or affected substantial rights (Count 6/LMJ). See pp. 6-12, *supra*; pp. 43-48, *infra*.

## II

### **THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING CORTES-MEZA'S MOTIONS FOR A NEW TRIAL**

#### *A. Standard Of Review*

The denial of a motion for a new trial based on newly discovered evidence is reviewed for abuse of discretion. See *United States v. Barsoum*, 763 F.3d 1321, 1341 (11th Cir. 2014), cert. denied, 135 S. Ct. 1883 (2015).

#### *B. Cortes-Meza's Rule 33 Motions And Evidentiary Hearing*

Cortes-Meza filed two post-trial motions under Federal Rule of Criminal Procedure 33 based on newly discovered evidence, one immediately before sentencing and the other shortly thereafter. Docs. 363-364 & 380. In each, defendant asserted that an evidentiary hearing was necessary because his counsel had recently learned that MMB—a victim who returned to Mexico in early 2009—had executed an affidavit stating that the other victims had willingly engaged in prostitution and had colluded at a group barbeque to denounce Cortes-Meza and his co-defendant relatives and fabricate statements to secure legal status in the United States. Doc. 363, at 1-3; Doc. 363-2, at 1-3 (certified English translation of MMB's March 2011 affidavit). Defendant further asserted that MMB's affidavit suggested that government agents had acted improperly in pressuring her to change her story and preventing her from testifying at trial. Doc. 364, at 2.

In particular, defendant asserted that MMB told defense counsel that the lead ICE case agent (Agent Yoo) had told MMB that: (1) the case would not go to trial for at least five years; (2) she would get a job and “papers” if she told the truth, but she never received either; (3) she would go to jail and be deported if she testified that she had not been forced into prostitution or held against her will; and (4) she could not return from Mexico to testify at trial. Doc. 364-1, at 2-3. Cortes-Meza reasserted these claims in his second motion, adding that the prosecution’s alleged failure to disclose any exculpatory statements by MMB prior to trial could constitute a *Brady* violation. Doc. 380, at 1-4.

The court scheduled an evidentiary hearing on the motions. Doc. 398. At first, MMB agreed to appear. Doc. 420, at 2. But she later changed her mind, stating that she was too frightened to travel to the United States, despite the government’s assurances that it had secured immigration documents to allow her to enter and leave the country for the hearing and that it had no intention of arresting her. Doc. 420, at 2-3 & n.1; Doc. 455, at 54. As a result, the court permitted Cortes-Meza to depose MMB in Mexico City. Doc. 420, at 3-6; Docs. 445-447.

MMB’s deposition took place on September 12, 2013. Supp. App., MMB Dep. Tr. (Dep. Tr.). MMB’s testimony undermined the credibility of her March 2011 affidavit (Doc. 363-2) and defense counsel’s affidavit (Doc. 364-1). In particular, on cross-examination, MMB stated that she executed her affidavit at the

suggestion of a member of the Cortes-Meza family; she did not mention the group barbeque to the case agents; she did not know what the other victims told ICE; she did not know many of the other victims' ages or individual circumstances; and she witnessed co-defendant Francisco Cortes-Meza being violent toward MPM and defendant being violent toward RHP and breaking her finger. Dep. Tr. 57-58, 65-86, 89-90. MMB further confirmed that Agent Yoo had not told her what to say; she had not been deported; she had not been charged as an accomplice; she had received temporary legal status and work authorization while in the United States; that the case agents never threatened her; and she never informed the case agents that she wanted to return to the United States to testify at trial. Dep. Tr. 99-112.

MMB also testified that ICE separately interviewed each victim; that LMJ, MVL, LGI, and BCA were not at the barbeque referenced in her affidavit; and that only NHP and RHP stated that they wished the Cortes-Meza men would be caught "so that we can be free" and both girls could obtain benefits. Dep. Tr. 14-15, 28-29, 41-50, 60-64, 93-97. In her deposition, MMB stated for the first time that the alleged victim collusion arose out of conversations that the victims had while housed together at a non-profit shelter in the months following ICE's raid. MMB conceded, however, that LMJ and MVL—who had been removed from Cortes-Meza's control before the raid—were not housed at the shelter, and that NMS, AAS, and BCA were moved elsewhere after a few weeks because they were

minors. Dep. Tr. 34-38, 51-53, 55. Thus, MMB's testimony confirmed that ICE separated LMJ and MVL from the other victims, leaving no opportunity for collusion between them and the others. Doc. 455, at 27, 51-52.

Following MMB's deposition, the court scheduled an evidentiary hearing. It reviewed MMB's deposition transcript and heard testimony from two ICE agents, including Agent Yoo. Doc. 455, at 3, 6-120. The agents described the chronology of the case, the timing and nature of their contact and interviews with the victims, the fact that each victim's official interviews took place separately and outside of the presence of other victims, the provision of temporary legal status and work authorization to each victim, and the agents' specific interactions with MMB. Doc. 455, at 8-48, 84-100. Consistent with MMB's deposition testimony, the agents testified that they did not threaten her to change her version of the events, did not mistreat her, did not withhold temporary legal status or other benefits from her, did not deny her access to case information, and did not fail to record information that she conveyed to them. Doc. 455, at 19-20, 32-33, 38, 40-41, 46-48, 52-53, 90-100, 104, 109, 113-115; see also Docs. 456, 460, 465 (post-hearing briefs).

*C. The District Court's Order Denying Both Motions*

The court denied both motions. Doc. 468. It found that MMB's testimony was immaterial to a number of defendant's convictions and that the nature of the

evidence was such that a new trial probably would not produce a different result. Doc. 468, at 6-12.

First, the court found that MMB's testimony did not affect the vast majority of the jury's verdict. The court explained that Cortes-Meza had conceded guilt on the immigration-related offenses at the close of trial (Counts 9-12, 14-17, 23-25, 28, and 30) and that MMB's testimony was immaterial to those charges. Doc. 468, at 6. It further explained that any claim that the other victims voluntarily engaged in prostitution was immaterial to Cortes-Meza's two convictions for sex trafficking of a minor (Counts 3 and 5), which did not require proof of force, fraud, or coercion. Doc. 468, at 6-7; see also Dep. Tr. 77-79 (MMB conceding that, when she resided with NMS in the United States, NMS was less than 18 years old when defendant prostituted her).<sup>9</sup> Finally, the court noted that, because MMB was a minor during the relevant time period, it was irrelevant whether she testified that she willingly engaged in prostitution. Doc. 468, at 11; see also Dep. Tr. 115-119

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<sup>9</sup> Regarding the sex trafficking of a minor charges, see Doc. 386, at 562-563, 568, 580, 591-592, 633-635, and Doc. 387, at 705-707 (NMS) (testifying that she was a minor, Cortes-Meza knew she was a minor, and she celebrated her 17th birthday with defendants and the other girls); Doc. 387, at 710-713, 716-719, 738 (AAS) (testifying that she was a minor and Cortes-Meza knew she was a minor); Doc. 385, at 359 (LMJ) (testifying that soon after LMJ arrived, defendant and the girls celebrated NMS's 17th birthday); Doc. 395, at 1181 (MPM) (describing NMS as very young when she arrived to the United States); Doc. 389, at 1269 (NHP) (testifying that defendant stated that NMS was "14" and "the youngest of all of us and that we were old women").

(MMB conceding that Juan Cortes-Meza knew that she worked as a prostitute before she turned 18 years old and that she gave a portion of her proceeds to Juan Cortes-Meza).

Second, with respect to the remaining charges of sex trafficking by force, fraud, or coercion (Counts 6 and 8), the court stated that “[s]erious credibility questions” reduced the likelihood that MMB’s testimony would have affected the outcome of the trial. Doc. 468 at 7. The court cited “[s]ignificant contradictions” between MMB’s statements to law enforcement, her affidavit, and her deposition testimony. Doc. 468 at 7-10; see also Docs. 365-1-365-4 (MMB’s 2008 and 2009 statements to law enforcement); Doc. 363-2, at 1-3 (MMB’s 2011 affidavit); Dep. Tr. 3-131 (MMB’s 2013 deposition).

Importantly, the court found that MMB acknowledged in her deposition that “she did not know all of the victims nor what their experiences were with” Cortes-Meza and his co-defendants, “she was aware of an active physical violence by Defendant against one of the victims as well as an act of violence by a Co-Defendant against another victim,” and her allegations about collusion among the victims “involved only two sisters, not all of the victims.” Doc. 468, at 10-11; see also Dep. Tr. 62-63, 68-87. Moreover, the court found that MMB testified that, contrary to her 2011 affidavit, she had received temporary legal status and work authorization while in the United States, had not been threatened by ICE agents,

and had never asked to return to the United States to testify at trial. Doc. 468, at 11; see also Dep. Tr. 37-38, 52-53, 55-56, 99-105, 107-112.

The court further found that MMB “admitted a lack of first hand knowledge in most instances” and that the testimony of defendant’s victims contradicted her statements. Doc. 468, at 11. The court also found that the factual admissions that the co-defendants made in connection with their guilty pleas—including their forced prostitution of and violence toward certain victims, including minors, and their reliance on false pretenses to persuade victims to come to the United States—contradicted her testimony. Doc. 468, at 12; see also Doc. 167, at 6-7; Doc. 177, at 4-6; Doc. 207, at 6-7 (plea agreements). The court reasoned that MMB at most could offer credible testimony regarding charges specific to her, none of which involved defendant. Doc. 468, at 11. Indeed, of the counts in the indictment that referenced MMB, only Count 1, the conspiracy count, went to the jury; as submitted, the count was premised on a number of overt acts unrelated to MMB. Doc. 390, at 1336; Doc. 110, at 1-17. Based on its review of MMB’s testimony and its familiarity with the record, the court concluded that the evidence was unlikely to produce a different verdict on the remaining counts. Doc. 468, at 12.

Finally, the court concluded that defendant’s allegations of government misconduct lacked merit. Doc. 468, at 12. It found “no evidence of misconduct on the part of any government agents”; to the contrary, the government had produced



MMB's statements to defense counsel and had no obligation to call MMB to testify where her statements reflected that "she would not have been a material witness." Doc. 468, at 12; see also Doc. 460, at 6-12 & Attachs. 1-7 (government's disclosure of MMB's statements).

*D. The District Court Did Not Abuse Its Discretion In Concluding That MMB's Proposed Testimony Did Not Warrant A New Trial*

The district court acted well within its discretion in denying Cortes-Meza's motions for a new trial based on his claims of newly discovered evidence involving alleged victim collusion and government misconduct. To succeed on his motions, Cortes-Meza had to satisfy a five-part test:

(1) the evidence was discovered after trial, (2) the failure \* \* \* to discover the evidence was not due to a lack of due diligence, (3) the evidence is not merely cumulative or impeaching, (4) the evidence is material to issues before the court, and (5) the evidence is such that a new trial would probably produce a different result.

*United States v. Schlei*, 122 F.3d 944, 991 (11th Cir. 1997). The failure to establish any prong is "fatal" to a new trial motion. *Ibid.* (quoting *United States v. Lee*, 68 F.3d 1267, 1274 (11th Cir. 1995)). This Court has stated that such motions "are highly disfavored" and "should be granted only with great caution." *United States v. Campa*, 459 F.3d 1121, 1151 (11th Cir. 2006) (en banc) (citation omitted). Defendant bears the burden of justifying a new trial. See *ibid.*

Even assuming, as the district court found, that Cortes-Meza discovered the evidence of alleged victim collusion and government misconduct after trial and

exercised due diligence in doing so,<sup>10</sup> the court properly denied his motions.

MMB's evidence was merely cumulative or impeaching, not material, and not likely to produce a different result. We address each prong in turn.

1.a. First, evidence of a witness's bias or motive is considered impeachment evidence. The evidence defendant elicited from MMB primarily concerned the other victims' motives to lie about being compelled into prostitution unwillingly. But defense counsel repeatedly pressed the victims on this precise issue in an attempt to convince the jury that they had a strong motive for implicating Cortes-Meza in order to qualify for lawful immigration status and work authorization. Indeed, defendant's strategy was to present the victims as self-interested prostitutes who claimed to be sex-trafficking victims once caught. Doc. 410, at 19-24

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<sup>10</sup> Although the district court found that defendant had satisfied the first two prongs of the five-part test because he did not know that MMB would not be present at trial and was unaware of her allegations of victim collusion (Doc. 468, at 5-6), this Court could affirm the denial of Cortes-Meza's motions based on his failure to satisfy those prongs. See Doc. 365, at 14-16; Doc. 460, at 6-12, 24 & Attachs. 1-7 (arguing below that defendant failed to satisfy both prongs); *United States v. Thompson*, 422 F.3d 1285, 1295 (11th Cir. 2005) (in drug case, affirming denial of new trial where defendant was aware before trial of potential witness's existence and involvement in drugs but failed to interview her both because she lived elsewhere and because he did not know that she had relevant information); *United States v. Devila*, 216 F.3d 1009, 1016-1017 (11th Cir. 2000) (affirming denial of new trial where evidence was not available in an admissible form during trial but "surely was discovered at that time" and could have been discovered before trial with due diligence), vacated in part on other grounds, 242 F.3d 995 (11th Cir. 2001); *United States v. DiBernardo*, 880 F.2d 1216, 1224 (11th Cir. 1989) (finding that it would be an abuse of discretion to grant a new trial where co-defendants knew of third co-conspirator's proposed testimony prior to trial).

(defendant's opening); Doc. 411, at 37-72 (defendant's closing). At trial, counsel thus cross-examined the victims about the circumstances under which they met Cortes-Meza and his co-defendant relatives, why they came to the United States, whether they engaged in prostitution voluntarily, whether they knew they were here illegally and subject to deportation, why there were inconsistencies in their prior statements, and whether they sought to stay in the United States after trial. Doc. 385, at 215-257 (RHP); Doc. 393, at 402-449 (LMJ); Doc. 386, at 463-483, 485-496 (LMJ); Doc. 386, at 538-558 (BCA); Doc. 387, at 648-701 (NMS); Doc. 387, at 763-795 (AAS); Doc. 395, at 1125-1167 (MVL); Doc. 395, at 1197-1201 (MPM); Doc. 389, at 1226-1229 (LGI); Doc. 389, at 1284-1302 (NHP).

Based on counsel's cross-examination, the jury was well aware of the victims' potential bias and motive to fabricate claims of force, fraud, or coercion. Yet it was for the jury to decide whether it found the victims' testimony credible in light of the entire record. See *United States v. Thompson*, 422 F.3d 1285, 1292 (11th Cir. 2005) ("It is well-established that credibility determinations are the exclusive province of the jury." (alteration and internal quotation marks omitted)). MMB's cumulative impeachment evidence, which simply reiterated the same potential theory of bias and motive that defendant explored on cross-examination, was unlikely to make a difference to the jury's credibility determinations. See *United States v. Noriega*, 117 F.3d 1206, 1219 (11th Cir. 1997) (stating that

cumulative evidence of witness's "incentives" for cooperating "would not have led the jury to scrutinize his testimony much more than it already had"); see *id.* at 1221-1222 (same).

b. MMB's testimony was also cumulative to the trial evidence. MMB stated that the women went shopping, had fun, and communicated with their families on cell phones. Dep. Tr. 10-11; Doc. 363-2, at 2. Several victims also testified that they had taken shopping trips, were permitted on occasion to speak to their families, and had attended barbeques and other gatherings. Doc. 384, at 176-182 (RHP); Doc. 393, at 379-381, 384 (LMJ); Doc. 386, at 625, 630-636 (NMS); Doc. 387, at 752-753 (AAS). Doc. 395, at 1118-1119 (MVL); Doc. 389, at 1276 (NHP). The victims further testified, however, that they could go out only when accompanied by defendant or his relatives; they were allowed to use their cell phones only to contact defendants or the drivers; they could make phone calls to their families only when monitored; and they were required to attend and enjoy barbeques and parties or risk being locked inside or beaten. Doc. 384, at 176-179 (RHP); Doc. 393, at 379-381, 384-388 (LMJ); Doc. 386, at 630-632 (NMS); Doc. 387, at 687-688, 701-702 (NMS); Doc. 387, at 745-747, 752-753, 793 (AAS); Doc. 395, at 1118-1120 (MVL); Doc. 389, at 1276-1279 (NHP). Defense counsel cross-examined the victims regarding these "freedoms." Doc. 385, at 233-238 (RHP); Doc. 387, at 687-688, 699-700 (NMS).

2. Second, MMB's testimony, which primarily concerned whether Cortes-Meza and his co-defendants used force, fraud, or coercion to prostitute the victims, was immaterial to at least sixteen of Cortes-Meza's convictions. Defendant admitted smuggling and importing the victims for purposes of prostitution (Counts 9-12, 14-17, 23-25, 28, and 30). In addition, with respect to sex trafficking of a minor (Counts 3 and 5), the government did not have to show force, fraud, or coercion for the jury to convict. See 18 U.S.C. 1591(a), (b)(2); Doc. 346, at 24-29 (jury instructions). Nor did the government have to show force, fraud, or coercion for the jury to convict on Count 21, transporting a minor for purposes of prostitution. See 18 U.S.C. 2423(a); Doc. 346, at 32-35 (jury instructions). Thus, for three of the sex-trafficking offenses (Counts 3, 5, and 21), it was immaterial whether the other victims willingly participated in prostitution or colluded to falsely claim that Cortes-Meza had forced them into prostitution. See, *e.g.*, *United States v. Hamilton*, 559 F.2d 1370, 1373 (5th Cir. 1977) (affirming denial of new trial where "evidence not under attack amply sustains the conviction").

3. Finally, Cortes-Meza did not show that MMB's testimony was likely to produce a different result on the remaining three counts (Counts 1, 6, and 8). The court found that MMB was not credible and that she had little, if any, knowledge of defendant's conduct toward the other victims. Doc. 468, at 7-12; Dep. Tr. 69-71, 73-77, 81, 85; see also *United States v. Mitchell*, 569 F. App'x 884, 885 (11th

Cir. 2014) (“[I]t is within the province of the trial court to consider the credibility of those individuals who give statements in support of the motion.” (citation omitted)); *Thompson*, 422 F.3d at 1295 (affirming that evidence would not produce a different result given the witness’s lack of credibility, other witnesses’ testimony, and the overwhelming evidence of defendant’s guilt); *Hamilton*, 559 F.2d at 1374-1375 (affirming denial of new trial after evaluating trial evidence); *Newman v. United States*, 238 F.2d 861, 862-863 (5th Cir. 1956) (noting district judge could assess credibility of new evidence based on trial record and testimony from evidentiary hearing). Moreover, MMB’s testimony would not have undermined LMJ’s or RHP’s testimony or overcome the overwhelming evidence of defendant’s guilt.

a. As for Count 6—sex trafficking by force, fraud, or coercion of LMJ—no part of MMB’s testimony undermines defendant’s conviction. MMB conceded that LMJ disappeared months before the ICE raid and that she was not present at either the group barbeque that occurred shortly before the June 2008 ICE raid or the victim shelter. Dep. Tr. 11, 59-62. In fact, the ICE agents deliberately separated LMJ and MVL from the other victims in order to protect against tainted statements. Doc. 455, at 27, 51-52. Because LMJ, the subject of Count 6, was removed from defendant’s control in January 2008 and had no subsequent contact

with the other victims, she had no opportunity to collude with them as alleged by MMB.

Moreover, LMJ's testimony provided compelling evidence of defendant's physical and emotional abuse. She described how Cortes-Meza approached her in a park in 2006, introducing himself as a clothing salesman and inviting her for a soda and then to a dance the next day with his brother Juan Cortes-Meza and Juan's girlfriend. Doc. 385, at 309-312. Once LMJ was in the car with them, defendant took her money and cell phone and drove six hours to a hotel in another Mexican state where he forced her to have sex with him. Doc. 385, at 312-315. Defendant asked LMJ to move to the United States with him, where he said they would marry and make good money. Doc. 385, at 323-325. Over LMJ's objection, they crossed the border illegally and traveled to Atlanta; during the trip, Cortes-Meza was aggressive and violent, often yelling at LMJ and telling her that she should do as she was told. Doc. 385, at 325-331.

Once in Atlanta, they went to a home where Juan Cortes-Meza and three other young women lived. Doc. 385, at 331-334. Defendant told LMJ that she would have to prostitute in order to repay her smuggling debt (even though she had never wanted to come to the United States); LMJ explained that she had no choice in the matter and that, if she did not follow his orders, defendant would beat her. Doc. 385, at 335-338. LMJ would call designated taxi drivers to take her to have

sex with at least 20 men per night; the driver would keep a portion of the money and she would give the rest to defendant. Doc. 385, at 338-344. This was LMJ's life for more than two years. Doc. 385, at 344. LMJ described Cortes-Meza as the leader of the scheme "because he was the one who gave the instructions and the orders. He was the one who told us what to do." Doc. 385, at 347.

LMJ also described frequent beatings and daily verbal abuse, which she said humiliated her and made her feel "worthless" and like "a piece of trash." Doc. 385, at 347; see also Doc. 385, at 348, 351-352. She testified that on a particularly violent occasion, defendant beat her with a closet rod and threw an iron at her head. Doc. 385, at 349-350. She described being bloodied and bruised with a split-open head but received no medical attention. Doc. 385, at 350-351. Other victims testified about witnessing defendant's violent behavior toward LMJ. Doc. 384, at 165-166 (RHP); Doc., 386, at 606-608 (NMS); Doc. 389, at 1266-1268 (NHP).

LMJ said that she did not feel as though she could escape because Cortes-Meza said that he would find or kill any girl who left and would harm her family. Doc. 385, at 352. Other victims expressed similar fears. Doc. 386, at 618-619 (NMS); Doc. 395, at 1117 (MVL); Doc. 389, at 1259 (NHP); Doc. 395, at 1201-1202) (MPM).



b. As for Count 8—sex trafficking by force, fraud, or coercion of RHP—the jury heard directly from RHP, who testified that Cortes-Meza approached her in 2007 and told her that he was a clothing salesman. Doc. 384, at 88-89. He invited her to a fair with his co-defendant relatives, after which he refused to take her home, brought her to a hotel, forced her to have sex with him, and then took her to his house in another Mexican state after telling her that he would marry her in three months. Doc. 384, at 88-97. RHP remained in the house for more than three months but never married; defendant told her that they would move to the United States, where she could work in a restaurant that paid well. Doc. 384, at 97-110.

RHP originally agreed to go, but she asked to go home once defendant began beating her violently. Doc. 384, at 100-103, 110-111, 115. Defendant refused and brought her to the United States illegally; when they arrived to the Atlanta area, defendant told RHP that she had to work as a prostitute. Doc. 384, at 123. When RHP protested, defendant beat her and told her that she had to support him and cover the smuggling fees that he paid to bring her to the United States. Doc. 384, at 123-127. Night after night, RHP and the other girls would contact drivers to take them to meet with scores of men who paid \$15-20 apiece for sex. RHP would hand over each night's proceeds to her driver and Cortes-Meza. Doc. 384, at 130-137, 139-145. RHP described defendant as the “big padrote,” or leader

of the entire group, and explained that he rented various houses, distributed supplies to the girls, collected their money, and ordered his co-defendant relatives to bring other girls into the prostitution ring and to beat other victims. Doc. 384, at 193-195.

RHP vividly described one of defendant's more violent attacks. When Cortes-Meza returned the day after another girl had intercepted RHP's attempted escape, he brutally beat RHP with a closet rod and broomstick and repeatedly kicked her after throwing her to the ground. Cortes-Meza broke her finger and cut open her head but did not take her for medical treatment. Doc. 384, at 154-162; Doc. 386, at 608-610 (NMS). The jury observed RHP's disfigured finger (Doc. 384, at 161-162) and heard from a surgeon who attempted to restore at least some function to it (Doc. 385, at 269-272). MMB confirmed that defendant physically attacked RHP and broke her finger. Dep. Tr., at 76-77. Other victims also described this beating and testified to witnessing other instances of defendant's violent behavior toward RHP. Doc. 385, at 360 (LMJ); Doc. 386, at 606-610 (NMS); Doc. 387, at 751-752 (AAS); Doc. 395, at 1108, 1115 (MVL); Doc. 395, at 1187-1188 (MPM); Doc. 389, at 1245-1246, 1268, 1270-1272 (NHP).

Significantly, Cortes-Meza has not suggested how MMB's testimony would undermine RHP's testimony and the jury's verdict on Count 8. To the contrary, MMB testified that she lived in a Cortes-Meza house with RHP while in the United

States and confirmed that RHP worked as a prostitute for and gave her proceeds to defendant. MMB further testified that she witnessed Cortes-Meza beating RHP and acknowledged that she did not have direct knowledge of RHP's relationship with defendant in Mexico or her reasons for coming to the United States and did not know whether RHP was forced into prostitution. Dep. Tr. 74-77.

c. Finally, for the conspiracy charge in Count 1, MMB's testimony is contradicted by the facts admitted by Cortes-Meza's co-defendants, the testimony of the other victims, and the non-testimonial evidence of Cortes-Meza's control over the operation's extensive prostitution activities and proceeds. The victims identified Cortes-Meza as the leader of the sex-trafficking scheme, describing his continual need for more women; his directions to the women and other men, including where they would live, which Cortes-Meza family member would supervise them, whether the men would beat them, their personal hygiene, and their use of contraceptives; his payment of rent, bills, and other expenses for the operation; and even instances in which he ordered NHP, NMS, and MVL to take pills to induce abortions after Cortes-Meza or a relative impregnated them. Doc. 384, at 123-148, 166-194 (RHP); Doc. 393, at 367-368, 372-383, 388-393 (LMJ); Doc. 386, at 528-533, 559 (BCA); Doc. 386, at 577-580, 582, 587-593, 600-606, 620-628 (NMS); Doc. 387, at 710-756, 793-795 (AAS); Doc. 395, at 1106-1120

(MVL); Doc. 395, at 1177-1181, 1186-1188 (MPM); Doc. 389, at 1220-1222 (LGI); Doc. 389, at 1236-1281 (NHP).

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In sum, the court considered the evidence of alleged victim collusion and government misconduct in the context of a full evidentiary hearing. It was familiar with the trial record and well positioned to assess both the relevance and potential impact of MMB's testimony. It examined the evidence in light of the disputed sex trafficking and conspiracy charges, Cortes-Meza's admission of guilt on the immigration-related charges, the factual bases for the co-defendants' guilty pleas, and the full trial record. The court found that MMB was not credible and that her testimony either was immaterial to defendant's convictions or would not result in a different verdict. Having properly found that Cortes-Meza failed to satisfy several elements of the five-part test, the court did not abuse its discretion in denying both Rule 33 motions.

### **III**

#### **THE DISTRICT COURT'S IMPOSITION OF A 480-MONTH SENTENCE ON THE FIVE SEX TRAFFICKING COUNTS WAS SUBSTANTIVELY REASONABLE**

##### *A. Standard Of Review*

This Court reviews the reasonableness of a sentence under a deferential abuse-of-discretion standard. See *United States v. Irey*, 612 F.3d 1160, 1188-1189

(11th Cir. 2010) (en banc); *Gall v. United States*, 552 U.S. 38, 41, 128 S. Ct. 586, 591 (2007). Defendant bears the burden of showing his sentence is substantively unreasonable in light of the record and the factors set forth under 18 U.S.C. 3553(a). See *United States v. Alvarado*, 808 F.3d 474, 496 (11th Cir. 2015).

Defendant does not challenge the procedural reasonableness of his sentence. Where, as here, a district court correctly calculates the Guidelines range, this Court will disturb its finding “only if” it is firmly convinced that the court “committed a clear error of judgment in weighing the [Section] 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. Wetherald*, 636 F.3d 1315, 1322 (11th Cir. 2011) (quoting *Irey*, 612 F.3d at 1190). The weight given to any particular sentencing factor “generally is left to the sound discretion of the district court.” See *United States v. Flanders*, 752 F.3d 1317, 1341 (11th Cir. 2014) (citation omitted), cert. denied, 135 S. Ct. 1188 (2015).

*B. The District Court’s Sentencing Determination*

Cortes-Meza was convicted of 19 federal offenses. The probation officer calculated his total offense level as 47 (PSR 50 ¶ 263) and his criminal history category as I, which yielded a Guidelines sentence of life imprisonment. PSR 56; see also Attach. Tbl. 2 (chart of defendant’s offenses).

Cortes-Meza filed several objections to the PSR, most of which the court overruled. Doc. 392, at 20. The court sustained defendant's objection to a two-point enhancement for having knowingly misrepresented his identity, explaining that it did not view the assessment as reaching the relevant conduct and that it had not imposed that specific assessment on Cortes-Meza's co-defendants. Doc. 392, at 13-18, 22; see also PSR 37 ¶¶ 145, 158. Based on this ruling, the court calculated Cortes-Meza's total offense level as 45, which again yielded an advisory life sentence. Doc. 392, at 22. Defendant does not challenge these calculations.

At sentencing, the court heard from five victims who described how their lives had been forever altered as a result of Cortes-Meza's conduct. Doc. 392, at 24-32. A court-authorized psychologist, whom Cortes-Meza's defense counsel had retained, also testified, noting that Cortes-Meza was raised in extreme poverty in Mexico and had been exposed to alcohol abuse and domestic violence as a child. Doc. 392, at 38-45. The psychologist stated that Cortes-Meza had "low average" intelligence and that his childhood likely contributed to poor decision-making skills; the doctor conceded, however, that this did not limit Cortes-Meza's ability to accomplish an elaborate sex-trafficking scheme or to manipulate or persuade his victims into performing commercial sex acts. Doc. 392, at 45-56.

The government addressed the Section 3553(a) sentencing factors, emphasizing defendant's leadership role in the scheme, how he tailored his

physical and psychological abuse to capitalize on each victim's vulnerabilities, the nature and extent of some victims' years-long prostitution, and the need to deter Cortes-Meza and others who might seek to commit future sex trafficking offenses. Doc. 392, at 58-65. The government sought the recommended life sentence. Doc. 392, at 67. Defendant argued that a life sentence ignored any hope of rehabilitation and created too great a disparity with the next highest co-defendant sentence of 240 months (Francisco Cortes-Meza), especially given defendant's failed attempts to plead guilty to certain charges. Doc. 392, at 67-74.

After considering the victims' testimony, the advisory life sentence, the psychologist's evaluation, the parties' recommended sentences, and the Section 3553(a) sentencing factors, the court imposed a prison sentence of 480 months on the sex trafficking counts, 60 months on the conspiracy count, and 120 months on the immigration-related counts, all to run concurrently. Doc. 392, at 75-79; Doc. 367 (Judgment); see also Attach. Tbl. 2 (chart).

The court explained that it imposed a below-Guidelines sentence of 480 months rather than life on the sex trafficking counts in order to avoid an undue disparity with the sentences it imposed on Cortes-Meza's co-defendants who each pleaded guilty to a single sex trafficking offense. Doc. 392, at 78, 82. But the court further explained that Cortes-Meza's specific conduct warranted a "substantial sentence," given the need to ensure that he was "incarcerated for

enough time that when [he] do[es] get out, there's not a great deal of danger that [he's] going to be doing this kind of conduct again.” Doc. 392 at 78-79. In support of his higher sentence, the court cited the ways in which Cortes-Meza victimized the young women and girls, the number of allegations of violence on his part, the leadership role he played in the overall scheme, the fact that he did not plead guilty and went to trial, and the need to deter him and others from engaging in similar future conduct. Doc. 392, at 78. The court explained that a 480-month sentence reflected both the severity of Cortes-Meza's conduct and the need for deterrence, while also leaving open the possibility that Cortes-Meza would be able to return to Mexico at the end of his life. Doc. 392, at 79-81.

*C. Cortes-Meza's Below-Guidelines 480-Month Sentence Is Reasonable*

As an initial matter, Cortes-Meza's sentence comported with his applicable Guidelines range. When a district court imposes a sentence within the advisory range, this Court “ordinarily will expect that choice to be a reasonable one.”

*United States v. Docampo*, 573 F.3d 1091, 1101 (11th Cir. 2009). Surely if this Court expects a within-Guidelines sentence to be substantively reasonable, it also must expect a below-Guidelines sentence to be substantively reasonable where a defendant challenges such sentence.

Defendant argues that his below-Guidelines 480-month sentence on the five sex-trafficking counts (Counts 3, 5, 6, 8, and 21) is substantively unreasonable for



two reasons: (1) it is unjustifiably twice as long as the sentences the court imposed on Francisco Cortes-Meza (240 months) and Juan Cortes-Meza (200 months); and (2) it is tantamount to a life sentence. See Br. 28-30. Both arguments lack merit.

1. Cortes-Meza's sentence is not substantively unreasonable simply because it is significantly higher than the sentences imposed on his co-defendants. As this Court has stated, a "disparity between the sentences imposed on codefendants is generally not an appropriate basis for relief on appeal." *United States v. Cavallo*, 790 F.3d 1202, 1237 (11th Cir. 2015) (alteration omitted) (quoting *United States v. Regueiro*, 240 F.3d 1321, 1325-1326 (11th Cir. 2001)); see also *United States v. Chotas*, 968 F.2d 1193, 1197-1198 (11th Cir. 1992). Although Section 3553(a)(6) requires a district court to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," that provision applies to nationwide sentence disparities. See, e.g., *United States v. Sierra-Villegas*, 774 F.3d 1093, 1103 (6th Cir. 2014) (stating that a court, in its discretion, may consider a defendant's sentence as compared to his co-defendants' sentences, but that Section 3553(a)(6) is concerned with limiting nationwide disparities among similarly situated defendants), cert. denied, 136 S. Ct. 34 (2015). Indeed, lowering a sentence in an individual case to avoid a disparity between co-defendant sentences may create other, unwarranted disparities between a defendant and similar offenders in other cases. See *United States v.*

*Smith*, 289 F.3d 696, 714 (11th Cir. 2002) (citing *Chotas*, 968 F.2d at 1197-1198); *Rita v. United States*, 551 U.S. 338, 349, 127 S. Ct. 2456, 2464 (2007) (stating that the Guidelines promote uniformity and proportionality in sentencing).<sup>11</sup>

Moreover, this Court has stated that where co-defendants are not similarly situated, it will not find an “unwarranted” sentence disparity. *United States v. Holt*, 777 F.3d 1234, 1270 (11th Cir.) (quoting *Docampo*, 573 F.3d at 1101), cert. denied, 136 S. Ct. 193 (2015). Here, the district court considered the sentences it had imposed on Cortes-Meza’s co-defendants, the sentences imposed on defendants convicted of similar crimes, and the issue of unwarranted disparities. Doc. 392, at 76-78, 82. In imposing defendant’s 480-month (though still below-Guidelines) sentence, the court cited the number of allegations of violence against Cortes-Meza, his leadership role in the sex-trafficking scheme, the fact that he went to trial, his advisory life sentence, and the need to ensure that he had little opportunity to engage in this conduct again. In contrast to defendant’s 19 jury

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<sup>11</sup> Although defendant does not make this argument, we note that his sentence comports with the sentences of other defendants convicted of similar offenses. At sentencing, the government cited five recent instances in which federal district courts in Georgia and Florida had imposed significant sentences in sex-trafficking cases. Doc. 392, at 63-65 (citing sentences of 30, 35, 40, 50, and 50 years); see *Irey*, 612 F.3d at 1219-1221 (comparing defendant’s sentence to the sentences imposed in other cases involving similar conduct); *United States v. Williams*, 564 F. App’x 568, 577-578 (11th Cir.) (affirming concurrent life sentences in sex trafficking case), cert. denied, 135 S. Ct. 288 (2014).

convictions (five of which involved sex trafficking and a possible life sentence), Francisco Cortes-Meza pleaded guilty to one count of sex trafficking by force, fraud, or coercion (Doc. 167-1), and Juan Cortes-Meza pleaded guilty to one count of sex trafficking of a minor and one count of importing an alien for prostitution (Doc. 207-1). Neither of those co-defendants faced a possible life sentence.<sup>12</sup>

Having presided over all co-defendants' plea allocutions, defendant's trial, and Cortes-Meza's and his co-defendants' sentencing hearings, the district court was in the best position to assess defendant's relative culpability. The court reasonably concluded that Cortes-Meza and his co-defendants were not similarly situated and that the disparity in their sentences thus was permissible. Doc. 392, at 78-81; see also, *e.g.*, *United States v. Mozie*, 752 F.3d 1271, 1289 (11th Cir.) (no unwarranted disparity between defendant's life sentence and co-defendant's 156-month sentence where co-defendant pleaded guilty, cooperated with government, and was not "the ringleader"), cert. denied, 135 S. Ct. 422 (2014); *United States v. Hill*, 643 F.3d 807, 885 (11th Cir. 2011) (no unwarranted disparity between co-

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<sup>12</sup> Francisco Cortes-Meza's and Juan Cortes-Meza's applicable Guidelines ranges were as follows: Francisco Cortes-Meza – 108-135 months, with a mandatory-minimum sentence of 180 months; Juan Cortes-Meza – 135-168 months, with a mandatory-minimum sentence of 120 months. See U.S. Br. at 13-18, *United States v. Francisco-Cortes-Meza & Juan Cortes-Meza*, Nos. 10-11681-EE & 10-12052-EE (11th Cir. Sept. 30, 2010). The district court sentenced them to above-Guidelines sentences of 240 months and 200 months, respectively. See *ibid.* In contrast to those co-defendants' above-Guidelines sentences, Cortes-Meza received a below-Guidelines sentence.

defendants where defendant “was the leader, the kingpin who orchestrated the whole thing,” and the one who “bore the greatest responsibility for the massive crime”); *United States v. Owens*, 464 F.3d 1252, 1255 (11th Cir. 2006) (trial court’s consideration of Section 3553(a) factors suggested it was satisfied that sentencing disparity among co-defendants was warranted).

2. Defendant also argues that his 480-month sentence is substantively unreasonable because it is “tantamount to a life sentence.” Br. 28. The district court comprehended the severity of Cortes-Meza’s sentence, which it specifically imposed to leave open the possibility that he would be able to return to Mexico at the end of his life. Doc. 392, at 79-81. At sentencing, defendant was 37 years old and already in custody for three years. The Federal Bureau of Prisons inmate locator currently shows Cortes-Meza’s projected release date as May 7, 2043; by that date, Cortes-Meza will be 69 years old. Compare [www.bop.gov/inmateloc/](http://www.bop.gov/inmateloc/), with Br. 28 (suggesting that defendant will be in his 80s by the time he is released). The fact that the Sentencing Commission (Br. 28) recently used sentences “470 months or longer \* \* \* as a proxy to identify cases in which a de facto life sentence had been imposed” does not make the district court’s sentence here substantively unreasonable. *United States Sentencing Comm’n, Life Sentences in the Federal System* 10 (Feb. 2015), available at <http://go.usa.gov/xqKPk>; see also *United States v. Cramer*, 602 F. App’x 837, 840 (2d Cir. 2015) (in sex trafficking

case, rejecting claim that 360-month sentence was unreasonable because it amounted to a “*de facto* life sentence” in light of the defendant’s age and health).

\* \* \*

In sum, the court correctly calculated the applicable Guidelines range, heard the victims’ impact statements, weighed the psychologist’s evaluation of Cortes-Meza, reflected on the parties’ recommended sentences, and considered the Section 3553(a) factors. Doc. 392, at 13-82. Upon determining an appropriate sentence, the court “adequately explain[ed] the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall*, 552 U.S. at 50, 128 S. Ct. at 597 (citing *Rita*, 551 U.S. at 351, 127 S. Ct. at 2465). In the end, the court determined that a 480-month sentence achieved the purposes set forth in Section 3553(a), including “the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense”; the need to adequately deter such conduct; and the need to “protect the public” from defendant’s further crimes. 18 U.S.C. 3553(a)(2)(A)-(C); Doc. 392, at 75-82; see also *United States v. McKinley*, No. 14-15619, 2016 WL 1425917, at \*9 (11th Cir. Apr. 12, 2016) (affirming life sentence in sex-trafficking case where court weighed mitigating and aggravating factors, examined the nature and circumstances of the offense, and determined the sentence was just and fair). Accordingly, no basis exists to disturb the district court’s judgment.

**CONCLUSION**

For the reasons stated above, this Court should affirm defendant's convictions and sentence.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitation and typeface requirements imposed by Federal Rules of Appellate Procedure 32(a)(7)(B) and 32(a)(5). The brief was prepared using Microsoft Office Word 2007 and contains 14,000 words of proportionally spaced text. The typeface is Times New Roman, 14-point font.

s/ Erin H. Flynn  
ERIN H. FLYNN  
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Date: June 24, 2016

## **CERTIFICATE OF SERVICE**

I hereby certify that on June 24, 2016, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system and that seven paper copies identical to the electronically filed brief were sent to the Clerk of Court by certified First Class mail, postage prepaid. All participants in this case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Erin H. Flynn  
ERIN H. FLYNN  
Attorney



**ATTACHMENT**

**Table 1: Victims’ Initials, Testifying Names, and Trial Testimony Citations**

<b>Victim Initials</b>	<b>Partial Name Used at Trial</b>	<b>“Work” Name, if known</b>	<b>Record Citations to Trial Testimony</b>
LMJ	Lorena Miguel	Araceli	Doc. 385, at 306-361 Doc. 393, at 367-451 Doc. 386, at 463-510
MVL	Maria de la Paz Vique	Maripaz	Doc. 395, at 1086-1168
BCA	Bartola Crisanto	Barbara	Doc. 386, at 510-559
AAS	Araceli Alcantar	Kimberly	Doc. 387, at 709-797
LGI	Letitia Garcia	N/A	Doc. 389, at 1205-1231
NHP	Natalia Heredia	Elizabeth	Doc. 389, at 1234-1303
NMS	Nancy Mendez	Maribel	Doc. 386, at 560-642 Doc. 387, at 648-708
MPM	Maria Teresa Perfecto	N/A	Doc. 395, at 1168-1202
RHP	Rosalina Heredia	Myra	Doc. 384, at 84-208 Doc. 385, at 215-269
MMB	Maria del Rosario Malaga*	Monica	Supp. App. Dep. Tr. 3-131

\* Did not testify at trial; subject of Cortes-Meza’s Rule 33 motions for a new trial and the Mexico City deposition

**Table 2: Charges Submitted to the Jury (Reflecting Victim, Verdict, Statutory Minimum/Maximum, Guidelines Sentence, and Sentence Imposed)**

<b>Offense</b>	<b>Counts Charged</b>	<b>Victim</b>	<b>Guilty Verdict</b>	<b>Statutory Minimum/Maximum</b>	<b>Guidelines Sentence</b>	<b>Sentence Imposed</b>
<b>18 U.S.C. 371</b> <i>Conspiracy to commit:</i> <i>(1) sex trafficking by force, fraud, or coercion;</i> <i>(2) sex trafficking of a minor;</i> <i>(3) importing aliens for the purpose of prostitution;</i> <i>(4) encouraging and inducing aliens to enter and reside in the United States</i>	1	ALL NINE VICTIMS	X  (x)  (x)  (x)  (x)	5 year maximum		60 mos.
<b>18 U.S.C. 1591(a) &amp; (b)(2)</b> <i>Sex trafficking of a minor</i>	3 5	NMS AAS	X X	10 years – Life	Life (120 mos. mandatory)	480 mos. 480 mos.
<b>18 U.S.C. 1591(a) &amp; (b)(1)</b> <i>Sex trafficking by force, fraud, or coercion</i>	6 8	LMJ RHP	X X	15 years – Life	Life (180 mos. Mandatory)	480 mos. 480 mos.
<b>18 U.S.C. 2423(a)</b> <i>Transportation of a minor for purposes of prostitution</i>	21	AAS	X	10 years – Life	Life (120 mos. Mandatory)	480 mos.
<b>8 U.S.C. 1328</b> <i>Importing and harboring an alien for purposes of prostitution</i>	9 10 11 12 14 15 16 17	LMJ MVL BCA AAS NHP NMS MPM RHP	X X X X X X X X	10 year maximum		120 mos. 120 mos. 120 mos. 120 mos. 120 mos. 120 mos. 120 mos. 120 mos.
<b>8 U.S.C. 1324(a)(1)(A)(i)</b> <i>Bringing an alien into the United States through a non-designated point of entry</i>	23 24 25 28 30	LMJ MVL AAS NMS RHP	X X X X X	10 year maximum		120 mos. 120 mos. 120 mos. 120 mos. 120 mos.