

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

ANGEL MORENO SALAZAR, *et al.*

Defendants - Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States does not believe argument is necessary to resolve this appeal because the facts of record are clear, and the legal issues are straightforward and uncomplicated.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Nos. 06-20630, 06-20775

UNITED STATES OF AMERICA,

Appellee

v.

ANGEL MORENO SALAZAR, *et al.*

Defendants - Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS APPELLEE

JURISDICTIONAL STATEMENT

The district court had jurisdiction pursuant to 18 U.S.C. 3231. Final judgments were entered on July 21, 2006, for Angel Moreno Salazar, and on August 25, 2006, for Juan Carlos Salazar. The defendants filed timely notices of appeal on July 19 and September 6, 2006. This Court has jurisdiction to review the district court's judgments pursuant to 28 U.S.C. 1291 and 18 U.S.C. 3742(a).

STATEMENT OF THE ISSUES

1. Whether the district court, in sentencing the defendants, correctly calculated the Guideline range.
2. Whether the sentence imposed on Defendant Juan Carlos Salazar was reasonable.

STATEMENT OF THE CASE AND RELEVANT FACTS

1. The Offense

On November 9, 2005, a federal grand jury in the Southern District of Texas charged the defendants, Angel Moreno Salazar (No. 06-20630) and Juan Carlos Salazar (No. 06-20775), and four others with one count of conspiracy to violate the laws of the United States with respect to commercial sex trafficking, under 18 U.S.C. 371 (AMS R. 49-55; JCS R. 10-16).¹ The indictment alleged that Gerardo “El Gallo” Salazar, the uncle of Angel Moreno Salazar and the father of Juan Carlos Salazar, was the leader of a group of men who provided women and girls for prostitution in Mexico and in Houston, Texas (AMS R. 49-50; JCS R. 10-11).

¹ Throughout this brief, “AMS” refers to documents in the case of Angel Moreno Salazar (No. 06-20630), and “JCS” refers to documents in the case of Juan Carlos Salazar (No. 06-20775). “R.” refers to the record on appeal; “Br.” refers to the defendant’s brief; “PSR” refers to the pre-sentence investigation report; and “Add. PSR” refers to the addendum to the pre-sentence investigation report.

The indictment also alleged that, between early 2004 and July 19, 2005, El Gallo, the defendants, and others conspired to “recruit, entice, harbor, transport, provide and obtain by any means young Mexican women and girls, and benefit, financially and by receiving a thing of value, from participation in a venture which engaged in such acts, knowing that force, fraud and coercion * * * would be used to cause the young Mexican women and girls to engage in commercial sex acts,” in violation of 18 U.S.C. 1591(a) (AMS R. 51-52; JCS R. 12-13). The indictment further alleged that the conspirators knew that such “Mexican girls * * * had not attained the age of 18 years” and that “they would be caused to engage in a commercial sex act” (AMS R. 52; JCS R. 13).

The indictment alleged that, as part of the conspiracy, the conspirators smuggled Mexican girls and young women into the United States for the purpose of forcing them into prostitution; that they maintained a series of apartments in the Houston area where they housed the Mexican girls and young women; that they required the girls and young women to turn over their prostitution proceeds; and that they intimidated, threatened, and coerced the victims through deception, beatings, threats of harm, psychological coercion, and close supervision and rules, in order to assert their dominance and control over the victims and to compel their services in prostitution (AMS R. 52-53; JCS R. 13-14). The indictment also

alleged that, in furtherance of the conspiracy, El Gallo and his co-conspirators placed a 17-year-old girl known as “M.R.G.” as a prostitute in bars in Houston and beat her for having a drink with a male bar patron and then beat her again with a wooden stick and a wire cable, demanding that she kneel and ask for forgiveness for defying his authority (AMS R. 53-54; JCS R. 14-15). El Gallo also threatened M.R.G. with future beatings if she did not report to him mistakes made by her fellow prostitutes (AMS R. 55; JCS R. 16). The indictment further alleged that El Gallo and his co-conspirators placed a 16-year-old girl known as “R.A.O.” as a prostitute in bars in Houston (AMS R. 54; JCS R. 15).

Defendants Angel Moreno Salazar and Juan Carlos Salazar pleaded guilty respectively on February 6 and 3, 2006 (AMS R. 289, 300; JCS R. 166, 185). During their plea hearings, both defendants admitted to trafficking girls under the age of 18 for the purpose of forcing them into prostitution (AMS. R. 298, 300; JCS R. 179, 184-185).

2. *Sentencing*

Pre-sentence investigation reports (PSRs) were prepared for each of the defendants. Pursuant to the applicable Guideline for conspiracy, 18 U.S.C. 371, the PSRs calculated the offense level using the applicable Guideline “for the substantive offense, plus any adjustments from such Guideline for any intended

offense conduct that can be established with reasonable certainty.” U.S.S.G. § 2X1.1(a).² Thus, the PSRs invoked U.S.S.G. § 2G1.3, which applies to violations of the sex trafficking statute, 18 U.S.C. 1591, involving a minor. Pursuant to U.S.S.G. § 2G1.3(a), the PSRs applied a base offense level of 24. Under “relevant conduct,” the PSR for Juan Carlos Salazar stated that the defendant “assisted his father in illegally smuggling juvenile female R.A.O. into the United States from Mexico” (JCS PSR 13). The PSR for Angel Moreno Salazar stated that R.A.O. was “a juvenile forced into prostitution” and that the defendant “drove her to work in a cantina as a prostitute on at least one occasion” (AMS PSR 13).

Based on these facts, the PSRs increased the offense level for each defendant by two, pursuant to U.S.S.G. § 2G1.3(b)(1)(B), because the minor was in the defendants’ “custody, care, or supervisory control.” The PSRs also increased each offense level by two under U.S.S.G. § 2G1.3(b)(2)(B), because “a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct.” The PSRs further increased the offense levels by two under U.S.S.G. § 2G1.3(b)(4)(B), because the offense involved a commercial sex act. Finally, the PSRs decreased the offense levels by three, pursuant to U.S.S.G. § 3E1.1, for the

² The 2005 edition of the Federal Sentencing Guidelines were used in this case.

defendants' acceptance of responsibility. The PSRs thus applied a total offense level of 27 for each defendant, noting that the applicable Guideline range for that level is 70 to 87 months' imprisonment, pursuant to U.S.S.G. Ch. 5, Part A. Pursuant to U.S.S.G. § 5G1.1(a), however, the PSRs reduced the Guideline sentence to the statutory maximum of 60 months' imprisonment, under 18 U.S.C. 371 (AMS PSR 17; JCS PSR 17).

The defendants objected to their PSRs. Angel Moreno Salazar objected to the application of U.S.S.G. § 2G1.3, denying that he ever drove R.A.O. to the cantina or that he could have reasonably foreseen that his co-defendants had involved a minor in the offense (AMS R. 145-146). He also objected to the sentencing enhancements under U.S.S.G. § 2G.3(b)(1)(B) and (2)(B). Juan Carlos Salazar objected to his entire PSR, including the statement that he assisted his father in smuggling RAO into the United States (JCS R. 46, 47-48).³ The

³ In response to Juan Carlos Salazar's factual objections, the United States argued that the defendant was not entitled to a three-level sentence reduction for acceptance of responsibility because his objections contradicted his admissions made under oath at his plea hearing (JCS R. 76-78). The court agreed that the defendant's objections "were a bit overdone and that they did, really * * * come close to sort of denying the involvement that the defendant has already admitted to in his plea" (JCR R. 156). The court, however, denied the United States' request because the three-level reduction would not have had any effect on the ultimate sentence due to the Guideline range exceeding the statutory maximum (JCS R. 160).

defendant also argued that the recommended sentencing enhancements violated his Sixth Amendment rights because they are based on facts not found by a jury beyond a reasonable doubt, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), and that the total sentence was more than sufficient, and greater than necessary, to comply with the purposes set forth in 18 U.S.C. 3553(a)(2) (JCS R. 46).

In response to the defendants' objections, addenda to the PSRs were issued. The addendum to Angel Moreno Salazar's PSR explained that reliable and credible information, received from the FBI and Harris County Sheriff's Department, established by a preponderance of the evidence that the defendant drove R.A.O. to the cantina for purposes of prostitution (AMS Add. PSR 1). The addendum also explained that application of U.S.S.G. § 2G1.3 was supported by the defendant's own admission of facts during his plea hearing and that the sentencing enhancements were properly applied to those facts (AMS Add. PSR 2-3).

The addendum to Juan Carlos Salazar's PSR explained that the Supreme Court's decision in *Booker* does not preclude a court from finding by a preponderance of the evidence all facts relevant to a Guideline sentencing range

(JCS Add. PSR 1).⁴ The addendum also pointed out that, pursuant to local rules, the PSR did not disclose its final recommendation (JCS Add. PSR 2). Finally, the addendum noted that the various reports of interviews with R.A.O. confirmed that the defendant's father sent him to accompany R.A.O. from Tlaxcala, Mexico, to Reynosa, Mexico, where he arranged for a smuggler to bring her across the border, into the United States (JCS Add. PSR 3).

On July 17, 2006, the court held a sentencing hearing for Angel Moreno Salazar (AMS R. 230). The court overruled his objections to the PSR, finding by a preponderance of the evidence that he drove a minor to the cantina (AMS R. 231-235, 255). The court also found that it was reasonably foreseeable to the defendant that minors were involved in the sex trafficking operation (AMS R. 255). The court, therefore, adopted the PSR (AMS R. 247). Although the defendant did not request a mitigating role adjustment, the court decreased his offense level by three, finding no evidence that the defendant had participated in the conspiracy for more than one month (AMS R. 248, 255). Accordingly, the court applied a total offense level of 24, resulting in an applicable Guideline range of 51 to 63 months (AMS R. 251-252). The court then considered the factors

⁴ Two PSR addenda were issued for Juan Carlos Salazar, but the citations herein refer only to the first addendum, issued on June 29, 2006.

enumerated in 18 U.S.C. 3553(a), and sentenced the defendant to 51 months' imprisonment (AMS R. 255-256).

On July 25, 2006, the court held a sentencing hearing for Juan Carlos Salazar (JCS R. 153). The court overruled the defendant's factual objections to the PSR, but allowed the defendant an opportunity to explain his role in the smuggling of R.A.O. into the United States (JCS R. 155-156, 159-160). The defendant admitted that he "did the favor to the lady that is mentioned in the indictment," that is, "the favor of accompanying her from Mexico City to Reynosa" (JCS R. 160). The court also found that the defendant's legal objections were not valid, explaining that it was already required to consider the factors enumerated in 18 U.S.C. 3553(a)(2), and that any objection regarding *Booker* was premature (JCS R. 155). The court, therefore, adopted the PSR and sentenced the defendant to 60 months' imprisonment (JCS R. 160).⁵

⁵ On October 25, 2007, this Court issued an order dismissing the appeal of co-defendant Salvador Fernando Molina Garcia. Like the defendants in this case, Molina Garcia pleaded guilty to the indictment and was sentenced to 60 months' imprisonment, pursuant to the same Guidelines and enhancements at issue in this case. Molina Garcia's attorney filed an *Anders* brief, arguing that there existed no nonfrivolous issue on appeal with respect to the defendant's sentence. This Court agreed. See Order Dismissing Appeal No. 06-20563 (Oct. 25, 2007) ("Our independent review of the record, counsel's brief, and Molina Garcia's response discloses no nonfrivolous issue for appeal.").

SUMMARY OF THE ARGUMENT

In sentencing the defendants, the district court properly calculated the Guideline range. The court correctly applied U.S.S.G. § 2G1.3, which is applicable to sex-trafficking offenses involving minors. Application of this Guideline is clearly supported by the record. The defendants pleaded guilty to an indictment that explicitly charged them with a sex-trafficking conspiracy involving minors. Both defendants admitted at their plea hearings that they knew that the trafficked persons had not attained the age of 18. Moreover, the PSRs cited specific offense conduct for both defendants involving the trafficking of R.A.O., a 16-year-old girl. The defendants did not produce any evidence to the contrary. The court's findings of fact, therefore, were not clearly erroneous, and the court properly calculated the Guideline range.

Defendant Juan Carlos Salazar's argument that his sentence was unreasonable because the court strictly applied the Guidelines in violation of his Sixth Amendment rights is without merit. Because the court sentenced him within a properly calculated Guideline range, his sentence is presumptively reasonable under this Court's precedents. The district court also properly considered the factors set forth in 18 U.S.C. 3553(a). Accordingly, this Court should affirm the sentence imposed by the district court.

ARGUMENT

THE DISTRICT COURT PROPERLY CALCULATED THE GUIDELINE RANGE AND THE DEFENDANTS' SENTENCES ARE REASONABLE

A. Standards Of Review

This Court reviews a defendant's sentence for "reasonableness," as guided by the sentencing factors enumerated in 18 U.S.C. 3553(a). See *United States v. Escareno Sanchez*, 507 F.3d 877, 883 (5th Cir. 2007) (citing *United States v. Booker*, 543 U.S. 220, 261-262 (2005)). A sentence within a properly calculated Guideline range is presumed reasonable. See *ibid.* (citing *United States v. Mares*, 402 F.3d 511, 519 (5th Cir.), cert. denied, 546 U.S. 828 (2005)); see also *Rita v. United States*, 127 S. Ct. 2456, 2462 (2007) (upholding the presumption of reasonableness). This Court reviews *de novo* the district court's interpretation and application of the Guidelines, and reviews findings of facts made in connection with sentencing for clear error. See *United States v. Armendariz*, 451 F.3d 352, 357 (5th Cir. 2006). Under *Booker*'s "reasonableness" standard, a court of appeals reviews the ultimate sentence for an abuse of discretion. See *Rita*, 127 S. Ct. at 2465; *Gall v. United States*, 128 S. Ct. 586, 591 (2007).

B. The District Court Correctly Calculated The Guideline Range

Defendant Angel Moreno Salazar argues (AMS Br. 7-10) that the district court erred in applying U.S.S.G. § 2G1.3, the Guideline for sex-trafficking offenses involving minors, rather than U.S.S.G. § 2G1.1, which is applicable to sex-trafficking offenses involving individuals other than minors. The defendant contends that the court clearly erred in finding that (1) he knew that the sex trafficking operation involved minors; and, alternatively, (2) it was reasonably foreseeable that the victims would include minors. Defendant Juan Carlos Salazar argues (JCS Br. 5) that the court erred in enhancing his sentence pursuant to U.S.S.G. § 2G1.3(b)(1)(B) and (2)(B) because he never admitted to participating in the smuggling of R.A.O. into the United States, or to unduly influencing a minor to engage in prohibited sexual conduct. The defendants' arguments lack merit.

1. The Court Correctly Calculated The Guideline Range For Angel Moreno Salazar

The record clearly demonstrates that Defendant Angel Moreno Salazar knew that the victims of the sex-trafficking operation involved minors.⁶ The indictment, to which the defendant pleaded guilty, explicitly charged him with a

⁶ A “minor” means “an individual who had not attained the age of 18 years.” U.S.S.G. § 2G1.3, comment. (n.1).

sex-trafficking conspiracy involving “young Mexican girls * * * knowing that such girls had not attained the age of 18 years” (AMS R. 52). The indictment also alleged that the conspirators placed M.R.G., a 17-year-old girl, and R.A.O., a 16-year-old girl, in bars in Houston to perform acts of prostitution (AMS R. 54).

At the plea hearing, the court read the conspiracy charge and described the elements of the offense to the defendant, including the element that he “knew * * * that the trafficked person was under 18 years of age” (AMS R. 298). The following colloquy followed:

[THE COURT:] Do you understand what the government is claiming that you have done to violate the law, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Did you commit this crime?

THE DEFENDANT: Yes.

(AMS R. 298). The United States then stated the facts that it would have proven at trial, including the fact that “the defendant had knowledge that * * * several of the prostitutes in the family’s services were under 18 years of age” (AMS R. 300).

After hearing these facts, the defendant entered a guilty plea (AMS R. 300).

Based on the defendant’s guilty plea and sworn admissions, the court’s finding that the defendant knew that minors were involved in the underlying sex-trafficking offense was not clearly erroneous.

The record also supports the court’s finding that it was reasonably foreseeable to the defendant that minors would be involved in the sex-trafficking operation. “In regard to guideline enhancements, the district court may adopt facts contained in a PSR without inquiry, so long as the facts have an adequate evidentiary basis and the defendant does not present rebuttal evidence.” *United States v. Caldwell*, 448 F.3d 287, 290 (5th Cir. 2006). “Furthermore, in determining whether an enhancement applies, a district court is permitted to draw reasonable inferences from the facts, and these inferences are fact-findings reviewed for clear error as well.” *Ibid.*

The defendant’s PSR stated that he drove R.A.O., a 16-year-old girl, to the cantina to perform acts of prostitution on at least one occasion (AMS R. 255). In response to the defendant’s objection to this statement, the court inquired about the PSR’s evidentiary basis (AMS R. 234). Counsel for the United States directed the court to the Harris County Sheriff’s Office supplemental report, which recorded R.A.O.’s recollection that the defendant drove her to the cantina at least one time to engage in prostitution (AMS R. 235).⁷ The defendant did not present any rebuttal evidence. Accordingly, the court did not clearly err in finding that it was reasonably foreseeable to the defendant that minors would be engaged in

⁷ The relevant statements in the report may be found at AMS R. 186.

prostitution. See, *e.g.*, *Caldwell*, 448 F.3d at 291-292 (affirming court's inference that defendant who pleaded guilty to conspiracy to acquire firearms from licensed dealers had reason to know that a firearm would be used to commit a felony based on fact, set forth in PSR, that the defendant transported firearms out-of-state). The court, therefore, correctly calculated the Guideline range in sentencing the defendant based on his own conduct, as well as the reasonably foreseeable acts of his co-conspirators. See U.S.S.G. § 1B1.3(a)(1).

2. *The Court Correctly Calculated The Guideline Range For Juan Carlos Salazar*

For the reasons set forth above, the court did not err in finding that Defendant Juan Carlos Salazar participated in the smuggling of R.A.O. into the United States and that he unduly influenced a minor to engage in prohibited sexual conduct, pursuant to U.S.S.G. § 2G1.3(b)(2) and (b)(3). This defendant, like his co-defendant, pleaded guilty to a sex trafficking conspiracy involving minors (JCR R. 179, 184-185). At sentencing, the court adopted his PSR, which stated that he is the son of El Gallo, the leader of the sex trafficking operation, and that he assisted his father by providing girls and women from Mexico for prostitution both in Mexico and at bars, nightclubs, and cantinas in the Houston area (JCS PSR 13). The PSR also stated he “assisted his father in illegally smuggling juvenile

female R.A.O. into the United States from Mexico” (JCS PSR 13). When the court asked the defendant about his role in the smuggling of R.A.O., he admitted that he “did the favor to the lady that is mentioned in the indictment,” that is, “the favor of accompanying her from Mexico City to Reynosa” (JCS R. 160).

Accordingly, the court’s findings of fact were not clearly erroneous, and the court properly calculated the defendant’s Guideline range. See *Caldwell*, 448 F.3d at 290; U.S.S.G. § 1B1.3(a)(1).

C. Defendant Juan Carlos Salazar’s Sentence Was Reasonable

Defendant Juan Carlos Salazar also argues (JCS Br. 3-9) that his sentence was unreasonable because the court applied the Guidelines as if they were mandatory, in violation of his Sixth Amendment rights, as interpreted in *United States v. Booker*, 543 U.S. 220 (2005), and because the court did not consider all of the factors set forth in 18 U.S.C. 3553(a). This argument lacks merit.

Affirming this Court’s post-*Booker* approach in *United States v. Mares*, 402 F.3d 511 (5th Cir. 2005), and *United States v. Alonzo*, 435 F.3d 551 (5th Cir. 2006), the Supreme Court recently held that a court of appeals may consider a district court sentence that reflects a proper application of the Guidelines as presumptively reasonable. See *Rita*, 127 S. Ct. at 2462; accord *Gall*, 128 S. Ct. at 596-597. The Supreme Court explained that a presumption of reasonableness is

logical because the United States Sentencing Commission, in writing the Guidelines, is required to consider the same objectives set forth in 18 U.S.C. 3553(a) that a court is required to consider in sentencing a defendant. See *Rita*, 127 S. Ct. at 2463. The presumption thus “recognizes the real-world circumstance that when the judge’s discretionary decision accords with the Commission’s view of the appropriate application of § 3553(a) in the mine run of cases, it is probable that the sentence is reasonable.” *Id.* at 2465.

The defendant’s sentence is presumptively reasonable because it falls within a properly calculated Guideline range. The court did not, as the defendant contends, apply the Guidelines as if they were mandatory, without considering the factors set forth in 18 U.S.C. 3553(a). On the contrary, the court made clear that it was required by law to consider 18 U.S.C. 3553(a) (JCS R. 155), and explicitly addressed the statute’s factors in sentencing the defendant (JCR R. 162). The record is sufficient to satisfy this Court’s reasonableness review. See, e.g., *Alonzo*, 435 F.3d at 554; *Escareno Sanchez*, 507 F.3d at 883. Accordingly, this Court should affirm the district court’s sentence of this defendant.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgments of the district court.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), that the attached BRIEF FOR THE UNITED STATES AS APPELLEE is proportionally spaced, has a typeface of 14 points, and contains 3,675 words.

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Date: January 7, 2008

CERTIFICATE OF SERVICE

I certify that on January 7, 2008, two copies and one diskette containing an electronic copy of the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE were sent by overnight carrier to the following counsel of record:

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