

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13946

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRES ALVARADO,

a.k.a. Jose Antonio Boada-Alfonso,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:23-cr-00022-KD-3

Before JORDAN, JILL PRYOR, and KIDD, Circuit Judges.

PER CURIAM:

Andres Alvarado is not a United States citizen. The U.S. Coast Guard brought him to the United States for prosecution after

the Coast Guard seized him, his five codefendants, and 214 kilograms of cocaine on a boat off the coast of Venezuela. Alvarado pleaded guilty to conspiracy to distribute cocaine on board a vessel and was sentenced to 96 months of imprisonment.

Here is the problem: Federal Rule of Criminal Procedure 11 requires the court to advise defendants of certain consequences of pleading guilty before accepting a guilty plea. Specifically, Rule 11(b)(1)(O) required the court to advise Alvarado of the immigration consequences of his plea. The district court did not do so. We conclude that the district court committed plain error that affected Alvarado's substantial rights.

We vacate Alvarado's conviction and sentence, and we remand the case to the district court for further proceedings.

I. BACKGROUND

On December 10, 2022, the U.S. Coast Guard apprehended Andres Alvarado, a Colombian citizen, and five other persons aboard a vessel off the coast of Venezuela. The vessel was transporting 214 kilograms of cocaine. The group was charged with conspiracy to distribute cocaine on board a vessel, pursuant to 46 U.S.C. § 70506(b), and possession with the intent to distribute cocaine on board a vessel, pursuant to 46 U.S.C. § 70503(a)(1).

Alvarado agreed to a plea agreement in which he would plead guilty to the conspiracy count. The district court conducted a plea hearing with the assistance of a Spanish-language interpreter. The district court addressed Alvarado's rights and some of the consequences of pleading guilty. But notably, neither the district court

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nor the plea agreement advised Alvarado that his guilty plea could carry immigration consequences, including removal from the United States. Alvarado did not object to anything at the plea hearing.

At sentencing, Alvarado was again assisted by a Spanish-language interpreter. During the sentencing hearing, the parties agreed that Alvarado was eligible for safety valve relief, which allowed the district court to impose a sentence below the mandatory minimum. They also agreed that Alvarado had cooperated with the government. Defense counsel noted that Alvarado had been “speaking with the [g]overnment” and was “working with another agency that he may be able to provide other information about some things in-country with an eye towards . . . a resentencing at some point.”

Before announcing the sentence, the district court allowed Alvarado to address the court. Alvarado spoke about the dangers of organized crime in Colombia and how his cooperation with the government placed his safety and life at risk. Specifically, Alvarado explained:

Organized criminal organizations are in the area where I live. They force one to commit the crimes, and they forced us to do it. And you are defenseless against them, and you have to obey them. At this time I am threatened to death by them because they learned that I was going to cooperate with the government of the U.S. I tried to do it right and to help the [g]overnment, but they learned that before I

started to cooperate because some of my codefendants rat me out with them that I was going to cooperate with the [g]overnment. At this point I am worried about that because, when I get out of here, they are going to kill me. So I thought it was the right thing cooperating with the government, but things have gotten worse.

But in any way I apologize again for being here, and I am really willing to continue to cooperate. But all of these have led me to just be sentenced by them to death.

The district court applied the safety valve reduction, credited Alvarado's attempts to cooperate, and sentenced him to 96 months of imprisonment followed by five years of supervised release. Alvarado did not object during the sentencing hearing.

Alvarado timely appealed.

II. STANDARD OF REVIEW

We review Alvarado's challenges for plain error because he did not preserve any issues for appeal during the plea hearing or sentencing proceedings. *United States v. Edwards*, 142 F.4th 1270, 1276 (11th Cir.) (plea hearing), *cert. denied*, 146 S. Ct. 903 (2025); *United States v. Jones*, 743 F.3d 826, 829 (11th Cir. 2014) (sentencing proceedings).

"To establish plain error, a defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affects substantial rights." *Edwards*, 142 F.4th at 1276 (quoting *United*

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States v. Roosevelt Coats, 8 F.4th 1228, 1235 (11th Cir. 2021)). If a defendant satisfies those three prongs, the Court has the “discretion to recognize an unpreserved error but only if (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Roosevelt Coats*, 8 F.4th at 1235 (citation modified).

III. DISCUSSION

Federal Rule of Criminal Procedure 11(b) requires the district court to advise a defendant of certain consequences of pleading guilty. “Because a guilty plea involves the relinquishment of several constitutional rights and privileges, it must be entered voluntarily and knowingly.” *United States v. Presendieu*, 880 F.3d 1228, 1238 (11th Cir. 2018). Rule 11 helps to ensure that a defendant enters a guilty plea knowing the full consequences of doing so. Fed. R. Crim. P. 11. Thus, “[w]hen accepting a guilty plea, a court must address three core concerns underlying Rule 11: (1) the guilty plea must be free from coercion; (2) the defendant must understand the nature of the charges; and (3) the defendant must know and understand the consequences of his guilty plea.” *United States v. Hernandez-Fraire*, 208 F.3d 945, 949 (11th Cir. 2000) (citation modified).

Rule 11(b)(1)(O) is the specific provision relevant to this case, and it requires the district court to inform a defendant “that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.” Fed. R. Crim. P. 11(b)(1)(O). The parties do not dispute that the district court failed

to advise Alvarado about the immigration consequences of pleading guilty.

But that error alone is not enough to unwind Alvarado's guilty plea and conviction. "[A] defendant who seeks reversal of his conviction after a guilty plea, on the ground that the district court committed plain error under Rule 11, must show a reasonable probability that, but for the error, he would not have entered the plea." *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004); *see also* Fed. R. Crim. P. 11(h). "The reasonable-probability standard is not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for error things would have been different." *Dominguez Benitez*, 542 U.S. at 83 n.9. We "may consult the whole record when considering the effect of any error on substantial rights." *United States v. Vonn*, 535 U.S. 55, 59 (2002).

Alvarado insists that if he had known the immigration consequences of his plea, he would not have pleaded guilty. Cooperation carried potentially life-threatening consequences for him back home in Colombia. At the sentencing hearing, Alvarado expressed his fear of returning to Colombia because he was facing death threats for cooperating with the government in this case. As the presentence investigation report notes, Alvarado faced similar death threats before. After a prior federal conviction, Alvarado was deported to Colombia, "was threatened by people related to his prior federal conviction," and consequently had to flee to Venezuela.

Alvarado asserts that, rather than face the consequences of being labeled a cooperator back home, he would have proceeded to trial if he had known that he would be removed from the United States. Alvarado acknowledges that he would have faced a longer sentence, but going to trial and, if convicted, serving the longer sentence would have delayed his removal.

In opposition, the government points out that Alvarado does not have lawful immigration status and argues that he had no reasonable expectation of remaining in the United States. Because of that, the government says, he cannot show that the district court's error affected his substantial rights, as knowledge of the immigration consequences would not have changed his plea calculus. But adopting the government's position would render Rule 11(b)(1)(O) meaningless for defendants without lawful immigration status—the very people for whom the advisement is most relevant. *See* Fed. R. Crim. P. 11(b)(1)(O). We decline to adopt the government's position.

The government further argues that Alvarado had no reason to believe he could remain in the United States because he was removed after a prior federal conviction. But Alvarado did not cooperate with the government in that prior federal case. By contrast, in this case, Alvarado cooperated with the government, and the district court credited the cooperation when calculating his sentence. Notably, at the sentencing hearing, defense counsel explained that Alvarado was continuing to cooperate with the gov-

ernment with the intention of later seeking a resentencing. Alvarado could have believed that he would receive some form of lawful immigration status in exchange for his cooperation. At the very least, as the government conceded at oral argument, nothing in the record would have informed Alvarado that he could not seek to remain in the United States.

We conclude that the record establishes that there is a “reasonable probability” that Alvarado would not have entered a guilty plea if the district court had informed him of the potential immigration consequences of doing so. *Dominguez Benitez*, 542 U.S. at 83. This is “the heart of what Rule 11 was designed to prevent—the unknowing and unintelligent waiver of constitutional rights.” *Hernandez-Fraire*, 208 F.3d at 951.

Therefore, the district court committed plain error that affected Alvarado’s substantial rights. And the district court’s failure to address a “core concern” of Rule 11 seriously affected the fairness and integrity of Alvarado’s judicial proceedings. *Id.* This error requires us to vacate Alvarado’s sentence and conviction.

IV. CONCLUSION

We **VACATE** Alvarado’s sentence and conviction and **REMAND** this case to the district court for proceedings consistent with this opinion.