

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10243
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GABRIEL COSSIO, JR.,

a.k.a. Gabriel JR Cossio,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:24-cr-00003-SPC-KCD-1

Before ROSENBAUM, GRANT, and LAGOA, Circuit Judges.

PER CURIAM:

Gabriel Cossio, Jr., appeals his sentence of 123 months' imprisonment, imposed to run consecutively to multiple undischarged state court sentences, for conspiracy to distribute and possess with intent to distribute 500 grams or more of cocaine. Cossio argues that the government breached its plea agreement with him, which required the government to recommend a sentence within the applicable guideline range, by recommending that his sentence run consecutive to his undischarged state court sentences and presenting argument that characterized him as a drug kingpin. For the reasons discussed below, we affirm.

Where a defendant preserves an objection to the government's breach of a plea agreement in the district court, we review the matter on appeal *de novo*. *United States v. Malone*, 51 F.4th 1311, 1318 (11th Cir. 2022). In contrast, we review an unpreserved claim that the government breached the plea agreement for plain error. *Id.* at 1314, 1318; *Puckett v. United States*, 556 U.S. 129, 133-34 (2009). To preserve an issue for appeal, a defendant must raise the issue "in such clear and simple language that the trial court may not misunderstand it." *United States v. Massey*, 443 F.3d 814, 819 (11th Cir. 2006) (quoting *United States v. Riggs*, 967 F.2d 561, 565 (11th Cir. 1992)).

We find plain error when "(1) an error has occurred, (2) the error was plain, and (3) it affected the defendant's substantial rights, and if those prongs are met, we then have discretion to correct the error if it (4) seriously affected the fairness of the judicial proceedings." *Malone*, 51 F.4th at 1319. In order to show that the

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government's breach of a plea agreement affected the defendant's substantial rights, the defendant must show a "reasonable probability" that the breach affected his sentence. *Id.* at 1319, 1321.

To determine whether the government breached a plea agreement, we must first determine the scope of the government's promises. *United States v. Copeland*, 381 F.3d 1101, 1105 (11th Cir. 2004). We apply an objective standard to any disputed terms in the plea agreement and ask "whether the government's actions are inconsistent with what the defendant reasonably understood when he entered his guilty plea." *Id.* (quotation marks omitted). When the government fails to perform the promises that the plea was based upon, the government breaches the plea agreement. *United States v. Hunter*, 835 F.3d 1320, 1324 (11th Cir. 2016). "Notably, a plea agreement's silence on an issue does not bind the government to any promise." *United States v. Tripodis*, 94 F.4th 1257, 1261 (11th Cir. 2024). And this is so even if the defendant was "arguably misled" by the government, as a term that "was never agreed upon with specificity" cannot be enforced. *In re Grand Jury Proceedings*, 819 F.2d 984, 987 (11th Cir. 1987).

While the government may oppose requests for a lower sentence, it "may not advocate a position contrary to its agreed-upon recommendation." *Malone*, 51 F.4th at 1322 (citing *United States v. Taylor*, 77 F.3d 368, 371 (11th Cir. 1996)). In *Malone*, we held that the government breached its obligation to recommend a sentence within the defendant's guideline range when the government recommended such a sentence but also argued that it should be two

or three times higher. *Id.* We explained that the government’s argument for a higher sentence was “at war” with its agreed-upon recommendation. *Id.* By contrast, in *Carrazana*, we held that the government did not breach its obligation to make no recommendation as to the quality or quantum of punishment when the government questioned the probation officer’s recommendation of 20 years’ imprisonment and characterized the defendant as a “kingpin.” *United States v. Carrazana*, 921 F.2d 1557, 1568-69 (11th Cir. 1991). As we explained in *Carrazana*, the government “expressly reserved in the plea agreement the right to inform the court and the probation department of all facts relevant to the sentencing process,” and the government “never agreed” to avoid characterizing the defendant as a kingpin. *Id.* at 1569.

Additionally, as it concerns the imposition of a consecutive sentence, we have treated consecutive sentences imposed at different times as distinct from each other rather than comprising a single, aggregate sentence. See *United States v. Llewlyn*, 879 F.3d 1291, 1295-98 (11th Cir. 2018) (rejecting the defendant’s argument to treat consecutive terms of imprisonment imposed at different times as an aggregate term of imprisonment because he was “sentenced in different courts, at different times, and for unrelated crimes”); *United States v. Gomez*, 955 F.3d 1250, 1254, 1260 (11th Cir. 2020) (stating that the defendant’s terms of imprisonment were within their respective guideline ranges, thus indicating a reasonable sentence, despite being imposed consecutively to a prior undischarged term of imprisonment larger than his guideline ranges).

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Here, we conclude that plain-error review applies, so we need not determine whether the government breached the plea agreement. Even assuming the government did, there is no plain error. The plea agreement was silent as to whether the government could recommend a consecutive sentence and such a recommendation was not inconsistent with the government's obligation to recommend a sentence within the applicable guideline range. Moreover, the government reserved the right to present information relevant to Cossio's sentencing and the facts in the presentence investigation report justified its characterization of Cossio. Under these facts, no Supreme Court or Eleventh Circuit precedent finds error. So even assuming error occurred here, that error cannot be plain. See *United States v. Hesser*, 800 F.3d 1310, 1325 (11th Cir. 2015) (citation omitted) (“[W]here the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is not precedent from the Supreme Court or this Court directly resolving it.”). We thus affirm Cossio's sentence.

AFFIRMED.