

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RITA MARTINEZ,

Defendant-Appellant

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

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BRIEF FOR THE UNITED STATES AS APPELLEE

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## **STATEMENT REGARDING ORAL ARGUMENT**

The United States agrees with defendant-appellant that oral argument is unnecessary in this case. The facts and legal arguments are adequately presented in the briefs and record, and the issue on appeal is straightforward. The decisional process would therefore not be significantly aided by oral argument.

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## STATEMENT OF JURISDICTION

Defendant Rita Martinez appeals her sentence in this criminal case. The district court had jurisdiction under 18 U.S.C. 3231 and entered final judgment on December 12, 2023. ROA.115.<sup>1</sup> On January 10, 2024, the district court issued an order extending the time for Martinez to file a notice of appeal until January 24, 2024. ROA.131, *amending* ROA.130. Martinez filed a timely notice of appeal on January 19, 2024. ROA.132; Fed. R. App. P. 4(b)(1)(A)(i) and (4). This Court has jurisdiction under 18 U.S.C. 3742 and 28 U.S.C. 1291.

## STATEMENT OF THE ISSUE

Whether the district court properly found that at least one victim of Martinez's sex-trafficking scheme was vulnerable, thus warranting a two-level enhancement under Section 3A1.1(b)(1) of the Sentencing Guidelines.

## STATEMENT OF THE CASE

Over a 20-year period, Rita Martinez coerced dozens of undocumented women and girls from Mexico to engage in commercial

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<sup>1</sup> "ROA. \_\_" refers to the page numbers of the Record on Appeal. "Doc. \_\_" refers to document numbers in the district court docket. "Br. \_\_" refers to page numbers in Martinez's opening brief.

sex acts with male patrons of her cantina (bar) in Texas. Martinez pleaded guilty to sex trafficking in violation of 18 U.S.C. 1591(a) and (b) and was sentenced to 30 years of imprisonment. She appeals her sentence.

**A. Factual Background**

Between approximately 1995 and 2019, Martinez recruited and brought approximately 40 young women and girls as young as 13 from Mexico to Texas. ROA.198-201, 440, 463, 465, 491. Martinez and her associates enticed the women and girls to come to the United States by falsely promising them jobs cleaning houses or working in a “restaurant.” ROA.439, 445-446, 449, 454-455, 457-458, 463, 491-492, 530. Martinez then arranged and paid for them to be smuggled into the United States. ROA.200. When they arrived in Texas, Martinez informed them that they owed her a smuggling debt and must work it off in the cantina she ran. ROA.201, 442-443, 449-450, 461, 560. She then compelled the women and girls to engage in commercial sex acts with the bar’s patrons to pay off their debt. ROA.201, 428, 435, 442-449, 457, 461, 491-492, 519, 521, 530, 548. Martinez’s son Genero Fuentes assisted in her operation. ROA.465-466.

Specifically, Martinez directed the women and girls to sit with the cantina's male patrons and encourage them to buy beer. ROA.427, 429, 440, 449, 455, 457, 461. Martinez then arranged for customers in the cantina to engage in commercial sex acts with the victims at Martinez's home, a trailer behind the cantina, or a motel. ROA.428, 439-440, 442-444, 446, 449, 455. Martinez never paid the women and girls for the beers that they sold or for the commercial sex acts that they performed; she instead claimed that she was applying their earnings to their smuggling debt or sending money to their families. ROA.427, 440, 446, 451, 457-458, 462, 530, 550.

Martinez generally required the smuggled women and girls to live at her house or at properties she controlled, and she and her associates drove the victims to and from the cantina each day. *See, e.g.*, ROA.318-320, 438, 448-449, 452, 457-460, 462-465, 529, 548. On the occasions when Martinez allowed the victims to call their families in Mexico, she or Fuentes was present, listening in on their conversations. ROA.437, 444, 455, 463, 552. Martinez charged the victims for rent, toiletries, and other sundry items, and she included those charges in the smuggling-debt tab that she maintained for each victim. As a result,



the victims generally could not pay off their debt. ROA.308-313, 322-324, 437, 439-441, 444, 446, 448, 451, 455, 457, 521, 530, 560, 577.

Martinez punished the women and girls when they resisted engaging in commercial sex acts. She pulled their hair, slapped them, and otherwise assaulted or threatened to assault them. ROA.202, 428-429, 437, 442, 444, 448, 453, 455, 457, 464, 521. Martinez warned the victims that she would have them arrested or deported if they refused to participate in her commercial-sex operation. ROA.202, 434, 440, 456, 521. She also sent one victim's two-year-old son to Mexico to live with Martinez's sister, and she threatened harm to the child if the victim did not continue to perform commercial sex acts. ROA.202-203, 231-232, 426-427, 453-454, 529-530. Martinez likewise pressured other victims by capitalizing on their need to pay for childcare arrangements Martinez imposed on them. *See, e.g.*, ROA.560-561.

## **B. Procedural Background**

A federal grand jury returned an indictment charging Martinez and Fuentes with 11 counts of sex trafficking, in violation of 18 U.S.C. 1591(a) and (b). ROA.15-24, *amended by* ROA.9 (6/30/2023 Minute Entry), *granting* ROA.70-72.

Pursuant to a plea agreement, Martinez pleaded guilty to Count 6, which charged her with sex trafficking of a minor—“Victim 5”—through the use of force, fraud, or coercion. ROA.74-85 (Plea Agreement); ROA.9 (6/30/2023 Minute Entry for plea hearing). Under the plea agreement, Martinez agreed to pay a total of \$840,000 in restitution to 14 victims, and the government agreed to dismiss the remaining counts of the indictment at the time of sentencing. ROA.76, 81. Fuentes, in turn, pleaded guilty to Count 1, which charged him and Martinez with sex trafficking of a minor—“Victim 1”—through the use of force, fraud, or coercion. *See* Doc. 55 (Plea Agreement).

In advance of Martinez’s sentencing, a probation officer prepared an initial presentence investigation report (ROA.645-710), together with a revised report (ROA.348-418) that addressed the government’s timely objections (ROA.261-347). The probation officer then completed a final report (PSR) (ROA.419-586) that accounted for 14 victim-impact statements (ROA.488-586). Martinez subsequently filed untimely objections to the second report. ROA.587-592 (citing ROA.348-418).

Using the 2005 Sentencing Guidelines, the PSR calculated Martinez’s base offense level under Section 2G1.3(a), which governs sex-

trafficking offenses involving minors. ROA.467. After applying Section 2G1.3(c)(3)'s cross-reference to Section 2A3.1, the PSR determined that Martinez's base offense level was 30. ROA.468. The PSR recommended several upward adjustments, including (1) a two-level enhancement under Section 3A1.1(b)(1) because Martinez committed her crime against at least one "vulnerable victim"; and (2) an additional two-level enhancement under Section 3A1.1(b)(2) because the crime involved a "large number of vulnerable victims." ROA.468-469 (quoting Sentencing Guidelines § 3A1.1(b)(1) and (2) (2005)).

The PSR explained that Section 3A1.1(b)(1)'s vulnerable-victim enhancement applies because Martinez's victims were "undocumented aliens" who had no income and were "being held until they paid off[f] their debt" by working for Martinez. ROA.468. The "majority" of the victims did not have "familial ties," and thus Martinez would advise them that "they had nowhere else to go" and that "law enforcement would not help them." ROA.468. The victims—who were "unfamiliar with the English language"—agreed, as they "believed that law enforcement officials would arrest them (victims) instead of helping them." ROA.468.

After hearing statements from eight victims and other testimony during two sentencing hearings, the district court adopted the PSR's factual findings and most of its recommendations, and it otherwise overruled Martinez's objections. ROA.182-186, 189, 243, 594. As relevant here, the court found it "easy" to conclude that Section 3A1.1(b)(1)'s vulnerable-victim enhancement applies. ROA.180-181. The court explained that this Court has affirmed the use of that enhancement for undocumented individuals, who are "easy prey" because they fear that if they seek assistance from law-enforcement officials, they will be arrested or deported, their children will be deported, or they will face other adverse consequences. ROA.180; *accord* ROA.214-215. The court also agreed that Martinez's crime involved a "large number" of vulnerable victims, warranting a further two-level enhancement under Section 3A1.1(b)(2). ROA.181-182.

Based on Martinez's total offense level of 42, her criminal history category of I, and relevant factors under 18 U.S.C. 3553(a), the district court sentenced her to 30 years' imprisonment—the lowest end of the 360-months-to-life advisory Guidelines range. ROA.187, 243-245, 594; *see also* ROA.116 (judgment). The court also sentenced Martinez to five

years' supervised release following her term of imprisonment.

ROA.117, 245, 594. In accordance with the plea agreement, the court ordered her to pay \$840,000 in restitution. ROA.117-119, 245, 597.<sup>2</sup>

### SUMMARY OF ARGUMENT

This Court should affirm Martinez's 30-year sentence. The district court did not commit clear error in finding that at least one victim of Martinez's sex-trafficking scheme was "vulnerable," thus warranting an enhancement under Sentencing Guidelines § 3A1.1(b)(1). Rather, the court properly found that Martinez's victims were "particularly susceptible" to her coercive "criminal conduct" due to their undocumented status, inability to speak English, fear of law enforcement, poverty, and lack of nearby family. *Id.* § 3A1.1, comment. (n.2). This Court has repeatedly relied on similar considerations in affirming vulnerability determinations, and it should do the same here.

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<sup>2</sup> The district court sentenced Fuentes to six years' imprisonment and ordered him to pay \$20,000 in restitution. ROA.247. Fuentes declined to appeal the judgment against him.

## ARGUMENT

### **The district court properly found that Martinez qualified for the vulnerable-victim enhancement under the Sentencing Guidelines.**

This Court should affirm the 30-year sentence imposed on Martinez for her serious sex-trafficking crime. Martinez’s sole argument on appeal (Br. 8-12) is that the district court erred in applying Sentencing Guidelines § 3A1.1(b)(1)’s enhancement because no victim here was “vulnerable.”<sup>3</sup>

This Court reviews preserved challenges to the district court’s application of Section 3A1.1(b)(1) for clear error, evaluating whether the court’s determination is “plausible in light of the record as a whole.”

*United States v. Wilcox*, 631 F.3d 740, 753 (5th Cir. 2011).

“[D]efer[ence]” to a district court’s vulnerability conclusion is especially appropriate where, as here, the court “had the opportunity to observe several of the [victims].” *Id.* at 754-755 (third alteration in original;

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<sup>3</sup> Martinez apparently agrees that if the district court properly applied Section 3A1.1(b)(1)’s vulnerable-victim enhancement, then it also properly applied Section 3A1.1(b)(2)’s enhancement for crimes involving a “large number” of vulnerable victims. *See* Br. 7-12 (challenging the former enhancement but not the latter). Martinez has therefore waived any challenge to the Section 3A1.1(b)(2) enhancement. *See United States v. Thames*, 214 F.3d 608, 611 n.3 (5th Cir. 2000).

citation omitted); ROA.224-240. Martinez fails to overcome the demanding clear-error standard.<sup>4</sup>

**A. The district court properly found that at least one of Martinez’s victims was vulnerable.**

The district court properly found that at least one of the dozens of undocumented women and girls Martinez smuggled into the United States as part of her finely tuned sex-trafficking operation was “vulnerable” within the meaning of Section 3A1.1(b)(1). ROA.180-181. That Section calls for a two-level enhancement when a defendant “knew or should have known that a victim of the offense was a vulnerable victim.” Sentencing Guidelines § 3A1.1(b)(1) (2005); *see also United*

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<sup>4</sup> This Court may also affirm under the plain-error standard, which governs unpreserved challenges and requires Martinez to establish “clear or obvious” error—error that is not “subject to reasonable dispute,” *United States v. Randall*, 924 F.3d 790, 796 (5th Cir. 2019) (citations omitted). That standard applies here because, although Martinez took issue with the vulnerable-victim enhancement in district court, she did so on grounds different from those she asserts on appeal. *See United States v. Cedillo-Narvaez*, 761 F.3d 397, 402 n.2 (5th Cir. 2014). In district court, Martinez asserted that the court should not apply the enhancement because (1) there was “no Evidence” that the victims were “unfamiliar with American law enforcement”; (2) the victims’ undocumented status is already taken into account in Section 2G1.3(a); and (3) imposing the enhancement together with the enhancement in Section 2G1.3(b)(2)(B) amounts to “double counting.” ROA.589 (objecting to ROA.401). Martinez advances none of these arguments on appeal. *See Br. 8-12; pp. 14-17, infra.*

*States v. Zats*, 298 F.3d 182, 190 (3d Cir. 2002) (one vulnerable victim is sufficient to warrant enhancement).

The commentary to Section 3A1.1 defines a “vulnerable victim” as someone (1) “who is a victim of the offense of conviction and any conduct for which the defendant is accountable” under Section 1B1.3; and (2) “who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.” Sentencing Guidelines § 3A1.1, comment. (n.2) (2005). The enhancement does not apply, however, if the “offense guideline” already incorporates the “factor that makes the person a vulnerable victim,” such as age. *Ibid.*

The district court did not clearly err in finding that at least one of Martinez’s victims was “vulnerable” under these principles. As the court explained, undocumented persons are “easy prey” for traffickers. ROA.180. That is so because such individuals are reluctant to seek help from law-enforcement officials due to fears of arrest, deportation, and other adverse consequences (ROA.180)—fears Martinez stoked and exploited to advance her scheme. ROA.468; *see also, e.g.*, ROA.202, 319-322, 456-457, 521 (explaining Martinez threatened victims with



deportation and told them they could not leave because “immigration” would get them). As the PSR adopted by the district court explained, Martinez’s victims were also vulnerable because (1) they were poor enough that they could not pay their smuggling debt, rendering them susceptible to Martinez’s coercive tactics; (2) most lacked “familial ties,” thus limiting the help available to them; and (3) they were “unfamiliar with the English language,” adding yet another obstacle. ROA.468; *see also, e.g.*, ROA.307, 449, 491, 519, 560.

This Court’s precedent amply supports the district court’s reliance on these considerations. In *United States v. Cedillo-Narvaez*, 761 F.3d 397 (5th Cir. 2014), for example, this Court affirmed a vulnerability finding based solely on the “illegal status” of “aliens” victimized by a hostage-taking conspiracy. *Id.* at 403-404; *see also United States v. Sanchez*, 740 F. App’x 440, 440-441 (5th Cir. 2018) (same). Similarly, this Court in *United States v. Garza*, 429 F.3d 165 (5th Cir. 2005), upheld a vulnerability determination based on findings that the defrauded victims were undocumented, poor, did not speak English, and feared deportation. *Id.* at 173-174; *see also United States v. Dock*, 426 F.3d 269, 273 (5th Cir. 2005) (affirming vulnerability finding based in

part the undocumented victims’ “desperation for transport” away from border).

And in *United States v. Murra*, 879 F.3d 669 (5th Cir. 2018), a case concerning a forced-labor conviction, this Court affirmed a vulnerability determination based on considerations mirroring those the district court relied on here. In affirming, this Court emphasized that the victims were undocumented and “were forced to accept . . . abusive conditions [the defendant] created for them” because they were “in an unfamiliar country with no food, clothing, shelter, or money other than what [the defendant] provided.” *Id.* at 687-688. Moreover, the Court explained, the defendant “retained [the victims’] immigration documents” and “threatened them with of immigration-related retribution if they disobeyed her.” *Id.* at 688. The vulnerable-victim enhancement was amply justified on the similar facts present here. *See also United States v. Sung Bum Chang*, 237 F. App’x 985, 986-989 (5th Cir. 2007) (affirming vulnerability finding in forced-labor case involving a smuggling operation structured like Martinez’s).

**B. Martinez’s arguments to the contrary are unavailing.**

Martinez’s limited rejoinders fail to establish clear error.

Martinez principally claims (Br. 10) that the district court did not “explain how the victims were more vulnerable than the average ‘heartland’ victim” under the sex-trafficking statute. In advancing that argument, Martinez emphasizes (Br. 10) that 18 U.S.C. 1591(a) criminalizes certain “fraud” and “coercion” accompanied by “entic[ing], recruit[ing], harbor[ing,] and transport[ing]” a victim. Martinez suggests that evidence of the same thus does not make the victims here unusually vulnerable.

Martinez misunderstands the district court’s vulnerability analysis, which rested on different considerations—the victims’ undocumented status, lack of familiarity with the English language, fear of law enforcement, precarious financial situation, and lack of nearby family. ROA.180, 214-215, 468. As explained, those factors are proper bases for a vulnerability determination because they rendered Martinez’s victims “particularly susceptible” to her fraudulent and coercive sex-trafficking scheme. Sentencing Guidelines § 3A1.1,

comment. (n.2) (2005).<sup>5</sup> Further elaboration by the court was not required, and regardless, this Court may “affirm an enhancement on any ground supported by the record.” *United States v. Garcia-Gonzalez*, 714 F.3d 306, 314 (5th Cir. 2013).

Martinez briefly takes issue (Br. 11-12) with the district court’s reliance on victims’ lack of familial ties and fluency in English. Significantly, however, the court’s vulnerability finding can be upheld based solely on the victims’ undocumented status, fear of law enforcement, and poverty—considerations Martinez ignores. ROA.180, 214-215, 468; pp. 11-13, *supra*.

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<sup>5</sup> Although Martinez has waived the issue by not raising it, these factors were not otherwise taken into account in determining Martinez’s offense level and thus were properly considered under Section 3A1.1. *See Cedillo-Narvaez*, 761 F.3d at 403-404 (holding district court properly rested vulnerable-victim finding on the victims’ undocumented status because that characteristic was not “a prerequisite to the offense” or “accounted for in the base offense level” under the Guidelines); *see also* Sentencing Guidelines § 2G1.3 (2005) (governing offense guideline); Sentencing Guidelines § 2A3.1(a) and (b)(1) (2005) (applicable offense guideline cross-referenced in Sentencing Guidelines § 2G1.3(c)(3)); 18 U.S.C. 1591(a) and (b) (statute of conviction); 18 U.S.C. 2241(a) and (b) (applicable statute cross-referenced in Sentencing Guidelines § 2A3.1(b)(1)); ROA.467-469 (PSR calculations relying on these guidelines and statutes), *adopted as modified*, ROA.594.

Regardless, the district court did not clearly err in relying on the absence of certain victims' family members. Martinez questions (Br. 11) how a lack of familial ties "makes someone unusually vulnerable" and claims there is "zero evidence" of a lack here. But it is obvious how the absence of family made victims vulnerable, as nearby family members could have helped the victims extricate themselves from Martinez's coercive scheme. *See United States v. Monsalve*, 342 F. App'x 451, 458 (11th Cir. 2009) (explaining undocumented victims were vulnerable in part because they "had no family in the United States or place to live other than what [the defendant] provided, making them vulnerable to pressure to engage in criminal conduct"). As one victim who "left [her] family" in Mexico explained, she would "th[ink] to [her]self, how do I escape from this if I know no one?" ROA.521. Another victim "would always think" that "if [her] mom or dad" in Mexico "knew what was happening[,] maybe they could come get [her] out." ROA.491.

The district court likewise committed no reversible error in relying on the victims' inability to speak English (ROA.468), given that the victims' language skills posed a barrier to seeking help from state and federal authorities (*see, e.g.*, ROA.468, 521) and made it more likely

that the victims would be reliant on Martinez when interfacing with businesses and other entities. *See, e.g.*, ROA.561 (recounting how one victim's lack of familiarity with English allowed Martinez to manipulate her during their visit to a hospital); ROA.435 (describing manipulation relating to documents Martinez asked victim to sign); *see also, e.g.*, *Garza*, 429 F.3d at 173-174 (upholding vulnerability determination based in part on undocumented victims' lack of facility with English); *Sung Bum Chang*, 237 F. App'x at 988-989 (same). Martinez's contention (Br. 11-12) that most residents near Martinez's cantina speak Spanish at home comes nowhere close to undermining the court's reasonable reliance on the victims' lack of familiarity with English. In short, the district court committed no clear error.

## CONCLUSION

For the foregoing reasons, this Court should affirm Martinez's sentence.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 3167 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ Sydney A.R. Foster  
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Date: August 19, 2024