

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States v. Leoner-Aguirre

No. 18-1333, United States Court of Appeals for the First Circuit (September 20, 2019)

SUMMARY

The First Circuit affirmed a RICO conspiracy conviction for an MS-13 leader, holding that the government need not prove the defendant personally agreed to commit or committed two predicate acts; it is sufficient the defendant agreed that at least two racketeering acts would be committed. The court rejected a requested jury instruction based on **United States v. Ramírez-Rivera**, finding it inconsistent with **Salinas v. United States**. Imprisonment alone does not constitute withdrawal from a conspiracy; the defendant bears the burden of proving affirmative withdrawal, which is constitutional. The court also upheld the admission of co-conspirator hearsay statements and rejected double jeopardy and evidentiary challenges.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lynch; Selya; Barron
JURISDICTION	Federal
DECIDED	September 20, 2019
DOCKET	18-1333
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from conviction after jury trial
STANDARD OF REVIEW	De novo for jury instruction challenges; plain error for unpreserved arguments; sufficiency of evidence reviewed in light most favorable to verdict; abuse of discretion for evidentiary rulings.
PRECEDENTIAL VALUE	published
PARTIES	Rafael Leoner-Aguirre v. United States

TOPICS

- criminal procedure
- conspiracy
- evidence
- hearsay
- double jeopardy
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred in rejecting a jury instruction on RICO conspiracy from *United States v. Ramírez-Rivera*.
2. Whether the district court should have required the jury to make an affirmative finding on which predicate acts were committed.
3. Whether the evidence was sufficient to negate his withdrawal defense and whether the burden of proof on withdrawal was constitutional.
4. Whether the district court erred in admitting certain testimony and recordings.
5. Whether the prosecution violated double jeopardy.

HOLDINGS

1. The district court correctly rejected the *Ramírez-Rivera* instruction because it was inconsistent with *Salinas v. United States*, which does not require the government to prove that the defendant personally agreed to commit or committed two predicate acts.
2. No error in not requiring an affirmative finding on which specific predicate acts were committed, because the government's burden is only to prove the defendant agreed that at least two acts of racketeering would be committed.
3. The defendant did not withdraw from the conspiracy; imprisonment alone does not constitute withdrawal, and the evidence showed he continued to lead the gang from prison.
4. The district court did not err in admitting the co-conspirator statement or in ruling on other evidentiary issues; no *Napue* error or Rule 403 abuse.
5. Double jeopardy challenge is foreclosed by *Gamble v. United States*, which allows separate sovereign prosecutions.

KEY QUOTATIONS

"The government's burden in proving a violation of the conspiracy offense, section 1962(d), is to show that the defendant 'knew about and agreed to facilitate' a substantive RICO violation." (11)

"In Salinas, the Supreme Court made clear that the government does not need to prove that the defendant 'himself commit[ed] or agree[d] to commit the two or more predicate acts requisite to the underlying offense.'" (11)

"Imprisonment alone does not satisfy a defendant's burden of proving withdrawal." (16)

FACTUAL BACKGROUND

Leoner-Aguirre was a high-ranking leader of the MS-13 gang's Enfermos clique in Massachusetts. He ordered and participated in multiple crimes including murder attempts, robberies, and drug trafficking. He continued to lead the clique from prison after arrest.

PROCEDURAL HISTORY

Defendant was convicted of RICO conspiracy and sentenced to 228 months' imprisonment; he appeals the conviction.

DISPOSITION

affirmed

CASES CITED

- United States v. Ramírez-Rivera, 800 F.3d 1, 18 (1st Cir. 2015)
- Salinas v. United States, 522 U.S. 52 (1997)
- United States v. Cianci, 378 F.3d 71 (1st Cir. 2004)
- Smith v. United States, 568 U.S. 106 (2013)
- United States v. Ciresi, 697 F.3d 19, 23 (1st Cir. 2012)
- United States v. Juodakis, 834 F.2d 1099, 1102 (1st Cir. 1987)
- United States v. Pizarro-Berríos, 448 F.3d 1, 10 (1st Cir. 2006)
- Napue v. Illinois, 360 U.S. 264, 269 (1959)
- United States v. Petrozziello, 548 F.2d 20 (1st Cir. 1977)
- Gamble v. United States, 139 S. Ct. 1960 (2019)
- United States v. Shifman, 124 F.3d 31, 35 (1st Cir. 1997)
- United States v. Rivera-Carrasquillo, 933 F.3d 33 (1st Cir. 2019)

CITED IN

- United States v. Leoner-Aguirre, United States v. Leoner-Aguirre, 939 F.3d 310, 313-14 (1st Cir. 2019)
- United States v. Leoner-Aguirre, United States v. Leoner-Aguirre, 939 F.3d 310, 316 (1st Cir.)