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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL FORRESTER, JR. (24-5095); DEREK LEIGHTON STANLEY (24-5104); AELIX SANTIAGO (24-5105); JAMIE HERN (24-5106); WILLIAM BOYLSTON (24-5116); JAMES WESLEY FRAZIER (24-5125); JASON MEYERHOLZ (24-5126),
Defendants-Appellants.

Nos. 24-5095/5104/5105/5106/5116/5125/

Appeal from the United States District Court for the Middle District of Tennessee at Nashville.
No. 3:17-cr-00130—Waverly D. Crenshaw, Jr., District Judge.

Decided and Filed: August 27, 2026

Before: McKEAGUE, LARSEN, and RITZ, Circuit Judges.

COUNSEL

ON BRIEF: Paul J. Bruno, BARRETT, JOHNSTON, MARTIN & GARRISON, PLLC, Nashville, Tennessee, Thomas W. Kidd, Jr., KIDD & URLING LLC, Harveysburg, Ohio, for Appellant Michael Forrester, Jr. David L. Cooper, COOPER LAW FIRM, Nashville, Tennessee, for Appellant Derek Stanley. Eileen M. Parrish, Nashville, Tennessee, for Appellant Aelix Santiago. Charles D. Buckholts, BUCKHOLTS LAW, Nashville, Tennessee, for Appellant Jamie Hern. John Bailey, Brentwood, Tennessee, for Appellant William Boylston. Houston Goddard, GODDARD POPE PLLC, Nashville, Tennessee, for Appellant James Frazier. Juni S. Ganguli, Memphis, Tennessee, for Appellant Jason Mayerholz. Michael A. Rotker, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., Kathryn Risinger Chris Suedekum, UNITED STATES ATTORNEY'S OFFICE, Nashville, Tennessee, for Appellee.

OPINION

LARSEN, J. Defendants are members or associates of the Clarksville, Tennessee chapter of the Mongols Motorcycle Club. A federal grand jury indicted defendants and other Mongols in a 75-count indictment for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), with predicate acts of murder, kidnapping, robbery, and drug trafficking, to name a few. Some defendants pleaded guilty or died before conviction. The defendants involved in this appeal were tried jointly and convicted on numerous counts. Most received life or near-life sentences. Defendants now appeal their convictions and sentences. For the reasons stated, we AFFIRM.

I. FACTUAL AND PROCEDURAL HISTORY

The Mongols Motorcycle Club (or Mongol Nation) is a national motorcycle gang with chapters spread across the United States and a history of violent activity. *See United States v. Mongol Nation*, 56 F.4th 1244, 1245 (9th Cir. 2023). It is "an all male, all white and Hispanic 1% motorcycle club," and it is "among the small minority of motorcycle clubs that openly flout the law by engaging in criminal acts as a part of its business." R. 2556, PageID 26105. Mongol members "are easily identified by the black leather vests (or 'cuts') they wear." *Id.* at 26105–06. The vests contain patches that indicate national and chapter membership, any office the member holds, and special recognitions.

The Mongols started in the Los Angeles, California area in 1969. The organization has a hierarchical leadership structure, with a national governing body, known as the "Mother Chapter," exercising control over local individual chapters. *Id.* at 26106; R. 2410, PageID 18126. The Mother Chapter is located in Southern California, and it "has authority over all chapters and members," including the power to resolve disputes. R. 2556, PageID 26106. Mongol Nation is governed by a written constitution, bylaws, and other rules, some written and some unwritten.

Individual chapters report to regional representatives of Mongol Nation. The individual chapters are run by officers drawn from the local membership, including a President, Vice President, Secretary-Treasurer, and Sergeant-at-Arms. Membership in a chapter requires paying dues, fees, and taxes, which in turn fund the organization, pay for national events, and cover legal expenses. Members must attend weekly chapter meetings. And they must own an operational motorcycle. Local officers oversee local club members. Full membership follows a two-stage initiation period. As described by the district court:

> Usually, one cannot become a full-fledged member of the Mongols until he has been a prospect for at least a year, during which time he wears a vest with a "P" on it. Underneath prospects are "hang-arounds," meaning individuals who are getting a feel for what the organization is about and whether they want to be a part of it. The chapter members, too, get to size-up the prospects and hang-arounds. Prospects and hang-arounds are pretty much at the beck-and-call of fully patched members during this period.

Id. at 26106–07.

In 2015, Michael Forrester, James Frazier, Jamie Hern, Aelix Santiago, and Jacob Ort were either members or prospects of the Sin City Disciples, another motorcycle club. They decided to leave the Disciples and form the first Tennessee-based chapter of the Mongols in Clarksville, Tennessee. They began referring to themselves as "prospects" of Mongol Nation and actively recruited other members. "Though not yet officially recognized as [members] by the Mongols Nation, they took to wearing 'soft colors,' *i.e.*, black and white items, which also happens to be the Mongols' colors." *Id.* at 26108. They also sold drugs, including methamphetamine. Around this time, Joel Aldridge, a local drug dealer, started to associate with the group.

The fledgling group's acts of violence began to increase. They showed support for Aldridge after he physically assaulted another drug dealer. They shot up the house of the president of another outlaw biker club. Santiago burned down Sin City's clubhouse in Nashville; Frazier and Ort did the same two days later to Sin City's clubhouse in Clarksville. Through these actions, the would-be Mongols distanced themselves from the Disciples and made themselves known around Clarksville.

The violence intensified. In May 2015, Frazier, Ort, and Aldridge kidnapped two women, Stephanie Bradley and Brandi Cooper. Bradley and Cooper had previously purchased drugs from Aldridge. But Frazier and Ort had come to believe that Bradley had stolen drugs or money from them. After Frazier, Ort, and Aldridge questioned Bradley about the missing drugs, she made the mistake of posting negative comments about the Mongols on Facebook. After her Facebook post, Frazier, Ort, Aldridge, and Santiago subjected Bradley to "even more intense" questioning. *Id.* at 26109. Bradley then posted another comment on Facebook referencing being "harassed by some motorcycle guys." R. 2413, PageID 18890. In response, Frazier, Ort, and Aldridge abducted Bradley and Cooper and drove them at gunpoint to a secluded area. "During the ride, Ort wiped the fingerprints off his bullets and placed them back into his gun. Aldridge put his gun in Bradley's mouth. Bradley was so scared during the ordeal that at one point she begged not to be killed and told her captors she could be raped instead." R. 2556, PageID 26109. Once out of the car, Ort shot Bradley approximately eight times. Frazier then ordered Aldridge to shoot Bradley as well, to ensure she was dead. So Aldridge shot her in the head. They left Bradley's body in the woods, but spared Cooper's life. Later, Cooper met with law enforcement about Bradley's disappearance and stated that Aldridge had killed her. She later told federal law enforcement officers of Frazier and Ort's involvement.

By this time, defendants were almost fully joined with the Mongol Nation. They underwent Mongol Nation background checks, conducted weekly chapter meetings, and preliminarily elected members for positions. Their criminal activity continued, including multiple robberies or attempted robberies. During an attempted robbery gone wrong, Ort was killed in a car crash.

In July 2015, Frazier, Santiago, Hern, and others went to California to join the Mongol Nation national run, essentially, the Mongols' version of a national convention. They hoped the national organization would officially recognize them as full members of the Mongol Nation by awarding them "patches." Although the national organization didn't recognize the Clarksville Mongols as an official chapter at that time, they were encouraged to continue to act as one.

Around this time, the fledgling Clarksville chapter became associated with the California Harbor Chapter, and its member Thomas Chavez, who would become the Clarksville chapter's sponsor (or "patch daddy.") Members of the Harbor Chapter had access to high-quality methamphetamine from a drug cartel and viewed Tennessee as a lucrative untapped market for distribution. The Clarksville Mongols were ready to help. Over roughly the next year and a half, Chavez and the Harbor Chapter would supply the Clarksville Mongols with large quantities of methamphetamine for distribution in Tennessee and Kentucky.

Beginning in September 2015, the Clarksville Mongols began distributing large quantities of methamphetamine. Frazier made numerous trips to California to purchase meth from Chavez. Frazier, Hern, Cole, and others were involved in the local distribution. And so was Derek Stanley, a Kentucky drug dealer who was introduced to Frazier in the fall of 2015. Stanley began purchasing large amounts of methamphetamine from Frazier and distributed it throughout Kentucky.

Methamphetamine wasn't the only drug the Clarksville Mongols distributed. Frazier and Santiago also trafficked prescription pills. On one occasion in January 2016, Frazier arranged to send Theresa Cobb and Kyle Heade to a drug buy to restock his supply of illicit prescription pills. Santiago was also a part of this discussion, and he loaned the couple his gun and his car for the deal. But the deal went bad when the supplier tried to rob Cobb, and Heade shot the supplier in response. After this incident, Heade and Cobb returned home, where they reconnected with Santiago and Frazier. Santiago asked Heade if he had removed the spent shell casings from his car and Santiago then retrieved his gun from Heade to clean it. Frazier asked other Mongol members to search for the wounded pill supplier. Meanwhile, the injured supplier informed law enforcement of the shooting and Cobb's address. Police subsequently searched the house and found the getaway car, firearms, ammunition, drugs, currency, and drug paraphernalia. Frazier and Santiago were arrested and charged with state-law offenses.

The following July, during the 2016 national run, the Mother Chapter officially recognized the Clarksville Mongols as a probationary chapter. Around this time, William

Boylston and Robert Humiston became members of the Clarksville Mongols. Frazier, Santiago, Hern, Boylston, and Humiston, among others, became fully patched members.

Emboldened by their national recognition, the Clarksville Mongols ratcheted up their violence. Humiston and Santiago, along with other members, fought with the Diablos Motorcycle Gang. "At one point the group managed to pull off the Diablos President's vest, an incredible sign of disrespect." *Id.* at 26118. The fight ended when police were summoned after a Diablo fired a gun. Humiston also engaged in a shootout with a member of the Iron Order Motorcycle Club.

In October 2016, Chavez, the Clarksville Chapter's sponsor, overdosed and died in a motel room he had rented with a woman named Sharon Priess. Chavez's death held "monumental" significance for the Clarksville Mongols, who were "still on probationary status." *Id.* at 26120. "His death in Clarksville reflected poorly on the Clarksville Chapter and raised the scorn of the Mother Chapter." *Id.* Priess fled, worried about the Mongols' response. When the Clarksville Mongols found Priess, they beat and strangled her until she agreed to give the California Mongols an account of Chavez's death. Priess eventually was allowed to leave.

In 2017, Jason Meyerholz, a member of a Colorado chapter of Mongol Nation, relocated to Tennessee and joined the Clarksville Mongols. Meyerholz quickly became involved in a dispute between Boylston and another Mongol, Stephen Cole, over missing motorcycles and an unpaid debt. In March of that year, Cole was evicted from a house where he had been storing Boylston's motorcycles. The motorcycles disappeared during the eviction process. Boylston thought Cole had sold the motorcycles for drugs, and he made that accusation to Meyerholz and other Mongols. Although Cole disputed taking Boylston's motorcycles, he eventually agreed to the Chapter leaders' demands to pay Boylston for them. But Cole never paid Boylston. And "in the fall of 2017, Cole informed members that he was not going to pay the debt after all." *Id.* at 26121–22. This led to his ouster from the club in November 2017.

With Cole out of the club, he "no longer had the protection of being a brother Mongol[]." *Id.* at 26122. So it was "easier to justify retaliation" against him. *Id.* Boylston and Meyerholz abducted Cole. They took him to a member's girlfriend's house and locked him in a shed.

"Inside the shed, Cole was zip-tied and mercilessly tortured for hours. He was beaten so badly that his skin was falling off his face and a tent spike was driven into his head." *Id.* Christian Dykes, a hang-around who helped dispose of the body, testified to seeing Cole's "mangled" face, with "[h]is jaw . . . hanging" and a nail "in the back of his head." R. 2439, PageID 23953. Cole died, and Boylston, Meyerholz, and Dykes proceeded to clean up the mess and dispose of the body.

In 2018, a federal grand jury returned a 75-count third superseding indictment against 21 defendants for crimes based on their membership in, or association with, the Clarksville Mongols. Twelve defendants pleaded guilty, two died, and the seven remaining defendants (appellants here) stood trial on numerous counts of racketeering conspiracies, murder, drug trafficking, kidnapping, assault, and illegal firearm possession. The relevant counts are as follows:

- Count 1 – conspiracy to participate in conducting the affairs of a racketeering enterprise
- Count 2 – conspiracy to distribute and to possess with intent to distribute 50 grams or more of methamphetamine
- Count 3 – conspiracy to commit money laundering
- Count 6 – kidnapping resulting in death
- Count 7 – kidnapping in aid of racketeering
- Count 8 – murder in aid of racketeering
- Count 9 – use of a firearm during and in relation to a crime of violence
- Count 10 – use of a firearm during and in relation to a crime of violence resulting in death
- Count 11 – use of a firearm during and in relation to a drug trafficking crime resulting in death
- Count 12 – distribution and possession with intent to distribute methamphetamine
- Count 13 – use of a firearm during and in relation to a drug trafficking crime

- Count 14 – assault with a dangerous weapon in aid of racketeering
- Count 15 – use of a firearm during and in relation to a crime of violence
- Count 16 – assault with a dangerous weapon in aid of racketeering
- Count 17 – use of a firearm during and in relation to a crime of violence
- Count 18 – conspiracy to commit robbery affecting interstate commerce
- Count 19 – robbery affecting interstate commerce
- Count 20 – kidnapping
- Count 21 – use of a firearm during and in relation to a crime of violence
- Count 22 – interstate travel in aid of racketeering
- Count 23 – distribution and possession with intent to distribute 50 grams or more of methamphetamine
- Count 24 – interstate travel in aid of racketeering
- Count 25 – distribution and possession with intent to distribute 50 grams or more of methamphetamine
- Count 26 – distribution and possession with intent to distribute 5 grams or more of methamphetamine
- Count 27 – distribution and possession with intent to distribute 50 grams or more of methamphetamine
- Count 28 – conspiracy to distribute and to possess with intent to distribute Oxymorphone
- Count 29 – distribution and possession with intent to distribute Oxymorphone
- Count 30 – attempted possession with intent to distribute Oxymorphone
- Count 31 – use of a firearm during and in relation to a drug trafficking crime
- Count 32 – possession with intent to distribute 5 grams or more of methamphetamine

- Count 33 – possession of a firearm in furtherance of a drug trafficking crime
- Count 34 – possession with intent to distribute Alprazolam
- Count 35 – possession of a firearm in furtherance of a drug trafficking crime
- Count 36 – assault with a dangerous weapon in aid of racketeering
- Count 37 – use of a firearm during and in relation to a crime of violence
- Count 38 – interstate travel in aid of racketeering
- Count 39 – interstate travel in aid of racketeering
- Count 40 – possession with intent to distribute 50 grams or more of methamphetamine
- Count 41 – use of a firearm during and in relation to a drug trafficking crime
- Count 42 – interstate travel in aid of racketeering
- Count 43 – possession with intent to distribute 50 grams or more of methamphetamine
- Count 44 – use of a firearm during and in relation to a drug trafficking crime
- Count 48 – accessory after the fact to attempted murder and assault with a dangerous weapon in aid of racketeering
- Count 49 – possession of a firearm by a convicted felon
- Count 50 – conspiracy to commit witness tampering
- Count 51 – witness tampering
- Count 52 – kidnapping
- Count 55 – assault with a dangerous weapon in aid of racketeering
- Count 56 – kidnapping resulting in death

- Count 57 – kidnapping in aid of racketeering
- Count 58 – use of a firearm during and in relation to a crime of violence
- Count 59 – murder in aid of racketeering.

Trial began on June 1, 2022, and the jury returned its verdicts on September 16, 2022. Defendants were all convicted on numerous counts and sentenced to various prison sentences, from life to near life sentences for most. The jury acquitted on some counts and the district court granted various motions to dismiss or motions for judgment of acquittal. In the end, defendants were convicted of the following counts and received the following sentences:

- Boylston – convicted on Counts 1, 55, 56, 57, 58, and 59; sentenced to life imprisonment plus a consecutive term of 84 months;
- Forrester – convicted on Counts 1, 2, 3, 12, 13, 18, 19, and 20; sentenced to 210 months' imprisonment;
- Frazier – convicted on Counts 1, 2, 3, 6, 7, 8, 10, 12, 13, 24–33, and 39–44; sentenced to mandatory life imprisonment, plus a 30-year consecutive term and various other concurrent terms ranging from 160 months to life imprisonment;
- Hern – convicted on Counts 1, 2, 3, 36, 37, 48, 49, and 52; sentenced to 360 months' imprisonment;
- Meyerholz – convicted on Counts 1, 55, 56, 57, 58, and 59; sentenced to life imprisonment plus a consecutive term of 84 months;
- Santiago – convicted on Counts 1, 2, 3, 28, 30, 31, and 52; sentenced to 480 months' imprisonment;
- Stanley – convicted on Counts 2, 3, 27, and 38; sentenced to 222 months' imprisonment.

Defendants now appeal.

II. SUFFICIENCY OF THE EVIDENCE

We begin with defendants' challenges to the sufficiency of the evidence supporting their convictions. We review de novo, taking the evidence in the light most favorable to the government. *See United States v. Woods*, 14 F.4th 544, 551 (6th Cir. 2021). We affirm if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (citation omitted). "Circumstantial evidence alone can defeat a sufficiency challenge," and "[w]e can neither independently weigh the evidence, nor make our own assessment of the credibility of the witnesses who testified at trial." *Id.* (citation modified).

A.

Boylston, Frazier, Meyerholz, and Santiago challenge their convictions on Count 1 for RICO conspiracy.

18 U.S.C. § 1962(d) prohibits conspiring to engage in a pattern of racketeering activity. "[T]o find a defendant guilty . . . the jury must find that two or more individuals agreed to participate in the conduct of an enterprise that would affect interstate or foreign commerce through a pattern of racketeering; that the defendant knowingly joined that agreement; and the defendant, or another member of the conspiracy, agreed to commit at least two acts of racketeering activity." *United States v. Iossifov*, 45 F.4th 899, 915 (6th Cir. 2022) (citation modified).

Several of the defendants' challenges go to whether there was sufficient evidence of a criminal enterprise. An "enterprise" is "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). "[T]he very concept of an association in fact is expansive." *Boyle v. United States*, 556 U.S. 938, 944 (2009). "[A]n association-in-fact enterprise is simply a continuing unit that functions with a common purpose." *Id.* at 948. Such an enterprise "must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Id.* at 946. Here, the government offered two complementary "enterprise" theories—that "[t]he Clarksville Mongols existed or would exist as an enterprise during the relevant dates." R. 2393, PageID 16647. That is, the defendants agreed to "found the previously-nonexistent Clarksville Mongols enterprise and to operate that enterprise after it came into existence." Government Br. at 220 (emphasis omitted). There was sufficient evidence of both.

First, the evidence supported the indictment's charge that the Clarksville Mongols formed "[i]n or about March 2015" and existed as an entity. R. 485, PageID 1324. Santiago himself stated that the defendants were "put[ting] in work" in March and April 2015 to distance themselves from the Disciples and to form their own group. Government App'x at 41. By May 2015, the group was wearing soft colors to align themselves with the Mongols and committing acts of violence to bolster their reputations. In July 2015, Santiago said that he and others had been "prospect[s]" of the Mongols for "almost 5 months now." *Id.* at 40. And it is irrelevant to the enterprise question that the Mother Chapter didn't officially recognize the Clarksville Mongols as an official chapter until later. *See Boyle*, 556 U.S. at 945 (stating that an enterprise may be "formal or informal" (citation omitted)). We agree with the district court that defendants did "not come close to even raising a question about whether the Clarksville Mongols were functioning as an enterprise in the Spring of 2015."[1] R. 2556, PageID 26146.

It also follows that the defendants agreed that they "would exist as an enterprise during the relevant dates." R. 2393, PageID 16647. As we explained in *United States v. Rich*, 14 F.4th 489, 493 (6th Cir. 2021), "an agreement to associate with and participate in a yet-to-be-formed racketeering enterprise that would affect interstate commerce constitutes a completed" RICO conspiracy.

[1]Frazier makes a related sufficiency argument as to Counts 7 and 8, which charged kidnapping and murder in aid of racketeering. He claims there was not enough evidence from which a jury could conclude an enterprise existed at the time the underlying offenses were committed in May 2015. Frazier has a point about the difference between the proof necessary to prove a conspiracy and a substantive offense. *See United States v. Rich*, 14 F.4th 489, 493 (6th Cir. 2021) ("Section 1962(d) is a conspiracy offense" which "criminalizes an *agreement* rather than any substantive criminal offense" so "an agreement to associate with and participate in a yet-to-be-formed racketeering enterprise that would affect interstate commerce constitutes a completed offense under § 1962(d)"). But that makes no difference here. Like a RICO enterprise, there is no requirement that an enterprise under the Violent Crimes in Aid of Racketeering (VICAR) statute be formalized. *See* 18 U.S.C. § 1959(b)(2). With that in mind, as we've already described, the Clarksville Mongols existed as an enterprise (in or about March 2015) prior to the kidnappings and murder (in May 2015), so Frazier's VICAR sufficiency challenge fails too.

Finally, the group's "purpose was to sell drugs in the Middle District of Tennessee, protect its territory through violence when necessary, and establish itself as *the* outlaw motorcycle club in Clarksville." R. 2556, PageID 26141. Much of its criminal activity either affected interstate commerce or was conducted in interstate commerce. And "[t]he relationship amongst those associated with the group was readily apparent from a number of factors . . . including the shared belief of their brotherhood, the wearing of soft colors in anticipation of becoming part of the Mongols Nation, and the wearing of vests signifying their arrival as full patched members." *Id.* And the "enterprise lasted for more than two years." *Id.* The government easily established the existence of a criminal enterprise and that the defendants agreed that a criminal enterprise would exist during the relevant dates.

Boylston argues that there was insufficient evidence to show that he was part of the Clarksville Mongols enterprise. His own trial counsel disagreed. *See* R. 2430, PageID 21709 ("Boylston was a Mongol. He was a member of the Clarksville Mongols Motorcycle Club."); R. 2425, PageID 21405 ("Boylston admits . . . [that he] was a member of the Clarksville Mongols."). Boylston has waived any argument to the contrary. *See Walker v. United States*, 134 F.4th 437, 440–41 (6th Cir. 2025).

Boylston also says that he didn't sell drugs, meaning that he didn't share in the "common purpose" of the Clarksville Mongols. *Boyle*, 556 U.S. at 944. But even if Boylston did not sell drugs, "[e]ach coconspirator need not participate in every overt act of the conspiracy in order for the conspiracy convictions to be upheld." *United States v. Mahar*, 801 F.2d 1477, 1488 n.18 (6th Cir. 1986). In any event, selling drugs was only one part of the "common purpose." Extreme violence with the goal of cementing the group's position in Clarksville and with the national chapter was another, and Boylston was clearly involved in that aspect of the enterprise.

Boylston then argues that because he didn't join the Clarksville Mongols until late in the game, he shouldn't be considered part of the ongoing enterprise. He is wrong. "[W]here a conspiracy is already in progress, a late comer who knowingly joins it takes it as he finds it and he may be held responsible for acts committed in furtherance of the conspiracy before he joined it." *United States v. Collins*, 799 F.3d 554, 579 (6th Cir. 2015) (quoting *United States v. Cimini*, 427 F.2d 129, 130 (6th Cir. 1970)).

There was sufficient evidence to support defendants' convictions on Count 1.

B.

Meyerholz challenges the sufficiency of the evidence for his convictions on Counts 55 through 59. These counts relate to the kidnapping and murder of Stephen Cole.

Ample testimony placed Meyerholz at site of Cole's abduction. Testimony also placed Meyerholz at the scene of the murder—a shed outside of a house owned by Jessie Decker, the girlfriend of Mongol member William Nelper. Decker testified that she saw Meyerholz go in and out of her house, and in and out of the shed, during the time of Cole's murder. Humiston also testified that Meyerholz said he went in and out of the shed. Humiston further testified that Meyerholz admitted his involvement in Cole's murder. For example, Meyerholz said that he was "going to have his brother's back" so he helped Boylston "with what he did." R. 2440, PageID 24328. Meyerholz told Humiston that he kept going in and out of the house that night because he was "getting sick to his stomach" from what was happening to Cole in the shed. *Id.* To dispose of the body, Boylston, Meyerholz, and Dykes placed Cole's body in the bed of Meyerholz's truck and covered it with a tarp; they left the body there overnight because they could not find a good spot to bury the body. And Humiston testified to seeing what looked like a body in the back of Meyerholz's truck the day after the murder. There was more than sufficient evidence to convict Meyerholz for his involvement in the murder of Cole.

Meyerholz contends, however, that the testimony was unbelievable, incredible, and made only by individuals who were motivated to protect their own interests. Meyerholz focuses on Humiston's testimony that Dykes had admitted to murdering Cole alone and says that no rational juror could conclude to the contrary.

It is true that the jury heard two competing theories regarding Cole's death. And the parties' closing arguments emphasized the competing theories, leaving it to the jury to decide whether to believe Meyerholz's claim that Dykes had killed Cole alone or the government's claim that Meyerholz and Boylston killed Cole, and that Dykes was falsely taking the "credit" to enhance his chances of becoming a Mongol. The jury weighed the witnesses' credibility and chose to believe that Meyerholz was involved with Cole's abduction and murder. We may not displace the jury's decision to believe one set of witnesses over the other. *See United States v. Spears*, 49 F.3d 1136, 1140 (6th Cir. 1995) ("A reviewing court does not reweigh the evidence or determine the credibility of the witnesses. The credibility of witnesses is exclusively the province of the jury." (citations omitted)).

There was sufficient evidence to support Meyerholz's convictions.

C.

Hern and Stanley challenge their convictions on Count 2 (drug conspiracy) and Count 3 (money-laundering conspiracy).

i.

Count 2 alleges an ongoing drug conspiracy in violation of 18 U.S.C. § 846 spanning the duration of the RICO conspiracy charged in Count 1. "The elements of a drug conspiracy are (1) an agreement by two or more persons to violate the drug laws, (2) knowledge and intent to join in the conspiracy, and (3) participation in the conspiracy." *United States v. Paige*, 470 F.3d 603, 608 (6th Cir. 2006).

There was sufficient evidence to support Hern's and Stanley's convictions on Count 2. As for Stanley's argument, we, like the district court, have difficulty making sense of it. *See* R. 2556, PageID 26153 ("The Court is at a loss as to how best to address Stanley's argument if for no other reason than it is not the Court's duty to match-up the facts to the 'applicable point of law' and argue the interplay between the two."). The district court did its best and discerned the issues as presented below. On appeal, Stanley does not contest the district court's framing of the issues. And to the extent that Stanley's appellate briefing presents new issues, not presented to the trial court, those issues are forfeited. *Castellon-Vogel v. Int'l Paper Co.*, 829 F. App'x 100, 103 (6th Cir. 2020).

The district court gleaned from Stanley's briefing that he might have been arguing that he was merely in a "buyer-seller" relationship with Frazier, or that he was merely someone who knew or associated with the conspirators; neither would have been sufficient to establish his role in the conspiracy. *See United States v. Wheat*, 988 F.3d 299, 307 (6th Cir. 2021). The district court concluded that the evidence was sufficient both to show Stanley's knowledge of the conspiracy and to link Stanley to it. For example, Stanley's "own cell phone records . . . show[ed] links to lower level Mongols[, and] the need to make payments [to the Mongols] after money was stolen." R. 2556, PageID 26153. And other defendants' cell phone records confirmed "Stanley's knowledge and participation in the conspiracy with repeated texts" not only between Stanley and Frazier but also between Stanley and "lower-level dealers." *Id.* at 26154. We agree. The evidence was sufficient to support the conclusion that Stanley joined the conspiracy. Stanley hasn't shown that there was insufficient evidence for his conviction on Count 2.

Neither has Hern. The district court did not address Hern's sufficiency claim with respect to this count. That's perhaps because Hern disregarded the district court's rules forbidding counsel from incorporating legal or factual arguments by reference from another document. Whether or not this forfeited Hern's challenge, there was enough evidence to establish a connection between Hern and the drug conspiracy. Janie Lee, a low-level dealer, testified that she purchased methamphetamine from Hern on at least two occasions. She also introduced her friends to Hern so they could purchase methamphetamine directly from Hern to sell. Michael West, another drug dealer and Mongol member, bought methamphetamine from Frazier and sold it to Hern. Hern told West that "he was going to sell it to somebody else." R. 2433, PageID 22346. And when Frazier went to jail, Theresa Cobb contacted Hern to give him Frazier's methamphetamine in a "quart-size bag" and money that Frazier had left behind. R. 2435, PageID 22967–70. For these reasons, there was sufficient evidence to convict Hern on Count 2.

ii.

Our conclusion with respect to Count 2 disposes of Hern and Stanley's Count 3 argument as well. Count 3 alleges a promotional money laundering conspiracy. "To prove conspiracy to commit promotional money laundering, the government had to show that [the defendant] knowingly and voluntarily joined an agreement between two or more people to (1) conduct a financial transaction from the proceeds of illegal activity, (2) knowing the money came from illegal activity, and (3) intending to promote that activity." *United States v. Tolliver*, 949 F.3d 244, 248 (6th Cir. 2020) (per curiam). The drug conspiracy in Count 2 formed the basis for the Count 3 convictions.

Hern and Stanley argue that Count 3 must be overturned because insufficient evidence supported the underlying drug conspiracy in Count 2. Because there was sufficient evidence on Count 2, these arguments fail. The only remaining argument is Stanley's bare assertion that there was "absolutely no evidence whatsoever" that he joined a money-laundering conspiracy. Stanley Br. at 26. But Stanley has forfeited this argument by failing to support it. *See United States v. Bean*, 214 F. App'x 568, 571 (6th Cir. 2007). There was sufficient evidence to support Hern and Stanley's convictions on Count 3.

D.

Santiago challenges his conviction on Counts 28, 30, and 31. These three counts relate to Santiago's involvement in a plan gone wrong to buy prescription Opana pain pills. "Opana is the brand name for the opioid Oxymorphone, which is a Schedule II controlled substance." Government Br. at 45 n.2.

The district court described the pertinent facts as follows:

> The facts presented to the jury in relation to these crimes was relatively straight-forward and came mostly from the testimony of [Theresa] Cobb and [Kyle] Heade. It showed that, during this time period, Cobb lived at the Meredith Way residence where Frazier also had a room and Heade (who was then Cobb's boyfriend) would stay there when he was not on post at Fort Campbell. Santiago, though not living in the residence, would visit there often.

> During this period, Cobb and Heade purchased Opana pills and other drugs for Frazier, oftentimes acting as a middleman between Frazier and Stanley. Cobb and Heade also used those drugs.
>
> In mid-January 2016, a deal was struck whereby 90 Opana-40 pills for $5,400 would be purchased from Timothy Grant, a local drug dealer that Cobb knew. On January 15, 2016, Cobb and Heade went to Cobb's residence where Frazier supplied them the money for the purchase. Santiago arrived after Cobb and parked his Charger behind her car. As the conspirators were discussing the upcoming plan to meet Grant at the Bojangles [restaurant], Heade asked Frazier for a weapon to use as protection, but Frazier said his gun was out of ammunition. Santiago then removed a 9mm pistol from his waistband, checked the chamber to confirm it was loaded, and handed it to Heade. Heade and Cobb then left the residence in Santiago's car and went to Bojangles. Unbeknownst to any of them, however, Grant and [his associate] had decided to rob Cobb of the money. This resulted in [a] shootout . . . with Heade firing the 9mm when he noticed a struggle . . . over the moneybag.

R. 2556, PageID 26177 (citation omitted).

Sufficiency of the Evidence. Santiago first challenges his conviction on Count 28 for conspiracy to distribute and to possess with intent to distribute Oxymorphone. Santiago argues that he was merely present in the house when the decision to purchase Opana from Grant was made; thus, he was not part of the conspiracy charged in Count 28.

There was sufficient evidence to support the conclusion that Santiago participated in the conspiracy. It is true that participation requires more than "mere association with conspirators." *United States v. Brown*, 332 F.3d 363, 372 (6th Cir. 2003) (citation omitted). But a "defendant's guilty knowledge and voluntary participation may be inferred from surrounding circumstances," including a close relationship between alleged conspirators. *Id*. at 372–73. "[B]oth Heade and [Cobb] testified that Santiago was present for at least some of the discussion about the planned purchase of Opanas from Grant." R. 2556, PageID 26179. And Santiago then "provide[d] Heade the 9mm pistol" and "allowed Cobb and Heade to use his car." *Id.* There was sufficient evidence of Santiago's involvement in the drug conspiracy.

Santiago next challenges his conviction on Count 30 for attempted possession with intent to distribute Oxymorphone. The jury convicted Santiago on the theory that he aided and abetted Cobb and Heade in their attempt to possess Oxymorphone. For attempt, "the government must have proved that the defendant both intended to commit the underlying offense and committed a 'substantial step' towards the commission of that offense." *United States v. Ferguson*, 65 F.4th 806, 811 (6th Cir. 2023) (citation omitted). And to prove that Santiago aided and abetted the attempt, "the government [had to] establish that he participated in the venture as something he wished to bring about and sought to make succeed." *United States v. Sadler*, 24 F.4th 515, 544 (6th Cir. 2022) (citation modified).

Here, Cobb and Heade took "substantial step[s]" toward possessing the Oxymorphone. *Ferguson*, 65 F.4th at 811 (citation omitted). They received the purchase money from Frazier; they obtained protection for the buy in the form of a gun from Santiago; and they met the supplier, Grant, with the intent of obtaining the drugs. Thus, the attempt was complete. And there was evidence that Santiago aided and abetted that attempt; he offered his gun and car to Cobb and Heade for protection and to help facilitate the transaction.

Santiago counters that there was no attempt because it turns out that Grant had intended to rob Cobb and Heade, rather than sell them Oxymorphone. As the district court explained, "That the intended drug deal turned into a robbery matters not a wit because substantial steps had been taken by Heade and Cobb in setting up the transaction and going to the meet." R. 2556, PageID 26179. The attempt was complete before the robbery, and there was sufficient evidence to convict Santiago on Count 30.

Santiago next challenges his conviction on Count 31 for aiding and abetting the use of a firearm during and in relation to a drug trafficking crime on the ground that there was insufficient evidence to convict him of the predicate acts—Counts 28 and 30.[2] As already stated, there was sufficient evidence to convict him on those counts, so this argument fails. Beyond that, Santiago provided the loaded firearm to Heade, who took it to the drug buy as protection. There can be no doubt then that the gun was used in relation to a drug trafficking crime. That the attempted drug buy ultimately turned into a defense against a robbery has no bearing on the underlying predicate—as explained, the attempt was complete once the participants took substantial steps toward completing the drug buy. *See Ferguson*, 65 F.4th at 811.

[2]Frazier adopts this sufficiency argument by reference, and it fails for the same reasons.

Inconsistent Verdicts. Santiago's last, related, argument is that the jury rendered inconsistent verdicts because it found him liable on Count 31 with the predicate acts of both Counts 28 and 30, while it found Frazier liable for the same but only in relation to Count 30. This court has "repeatedly recognized the proposition that inconsistent verdicts in a criminal case generally are not reviewable." *United States v. Randolph*, 794 F.3d 602, 610 (6th Cir. 2015). That's because "[j]uries are permitted to acquit out of compassion or compromise or because of . . . lenity." *United States v. Lawrence*, 555 F.3d 254, 262 (6th Cir. 2009) (citation omitted). So, when a jury renders an inconsistent verdict, "it is unclear whose ox has been gored." *United States v. Powell*, 469 U.S. 57, 65 (1984). And "a criminal defendant already is afforded protection against jury irrationality or error by the [courts'] independent review of the sufficiency of the evidence." *Id.* at 67.

Yet our cases have also suggested that two exceptions may apply: "First, where jury verdicts are marked by such inconsistency as to indicate arbitrariness or irrationality." *Randolph*, 794 F.3d at 610 (citation modified). Second, "where a guilty verdict on one count necessarily excludes a finding of guilt on another." *Id.* at 610–11 (citation omitted).

The second exception was suggested by the Supreme Court's decision in *Powell*, 469 U.S. at 69 n.8. But it cannot apply here because it contemplates an inconsistency between two *guilty* verdicts. *United States v. Ruiz*, 386 F. App'x 530, 533 (6th Cir. 2010); *United States v. Stewart*, No. 23-5691, 2024 WL 2974484, at *5 (6th Cir. June 13, 2024).

As for the first exception, its contours are decidedly unclear. Taken at face value, its central premise—that we may review inconsistent verdicts marked by "arbitrariness or irrationality," *Randolph*, 794 F.3d at 610 (citation omitted)—is hard to square with the Supreme Court's admonition that we do not review inconsistent verdicts that are the product of "mistake, compromise, or lenity," and that sufficiency-of-the-evidence review is the primary guard against jury "irrationality or error," *Powell*, 469 U.S. at 65–67. We have never, to our knowledge, applied this exception in a case affording relief to a defendant.[3] We have, however, declined to

[3] *Randolph* was the first case to announce this "exception." *Randolph*, 794 F.3d at 610. Since then, we have recited Randolph's "two exception[]" language five times. In two cases, *United States v. Turner*, 2024 WL 3634454, at *14 (6th Cir. Aug. 2, 2024), and *United States v. Lucas*, 2021 WL 4099241, at *6 (6th Cir. Sept. 9,

invoke this exception when, as here, the defendant's lone claim is that the jury behaved irrationally by treating his codefendant more leniently than himself. *See Hofstetter*, 31 F.4th at 435–36. That avenue for relief is foreclosed by Supreme Court precedent. *See Harris v. Rivera*, 454 U.S. 339, 348 (1981) ("Even assuming that [the co-defendant's] acquittal was logically inconsistent with the conviction of respondent, respondent, who was found guilty beyond a reasonable doubt after a fair trial, has no constitutional ground to complain that [his co-defendant] was acquitted.").

In sum, we agree with the district court that neither exception applies here. There was sufficient evidence to convict Santiago on Count 31.

E.

Hern and Santiago challenge their convictions on Count 52. Count 52 charged Hern and Santiago with kidnapping for their role in the abduction and interrogation of Sharon Priess after Thomas Chavez's overdose death. They argue that the Priess abduction didn't provide them with any benefit, as required by the kidnapping statute, 18 U.S.C. § 1201(a)(1).

An individual "may be guilty of federal kidnapping if he: (1) unlawfully kidnaps a person; (2) holds that person 'for ransom or reward or otherwise'; and (3) 'travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense.'" *United States v. Windham*, 53 F.4th 1006, 1010 (6th Cir. 2022) (quoting 18 U.S.C. § 1201(a)(1)). "[T]he word 'otherwise' refers to 'any objective of a kidnap[p]ing which the defendant may find of sufficient benefit to induce him to commit the kidnap[p]ing.'" *Id.* (citation omitted). To satisfy the "benefit" requirement, "it is sufficient for the government to show that the defendant

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2021), we found that the verdicts were not inconsistent in the first place. In another, we concluded that there was no "arbitrariness or irrationality," but offered as a reason that the verdicts were not necessarily inconsistent. *See Stewart*, 2024 WL 2974484, at *5 (finding that the jury could have concluded that proof of an agreement was missing in explaining acquittal on a conspiracy charge and conviction on the underlying substantive health care fraud). The same is largely true of *United States v. Hofstetter*, 31 F.4th 396, 436 (6th Cir. 2022), *vacated on other grounds* 143 S. Ct. 351 (2022) (mem.), and *United States v. Spivak*, 2026 WL 2111793, at *9 (6th Cir. Jul. 22, 2026).

acted for *any* reason which would in *any* way be of benefit." *United States v. Small*, 988 F.3d 241, 250 (6th Cir. 2021).

The Clarksville Mongols benefited from Priess's abduction. As explained previously, Chavez's death in the Clarksville Mongols' territory "was monumental" because he was a lifetime member of the Mongols and the Clarksville chapter's sponsor. R. 2556, PageID 26120. "His death in Clarksville reflected poorly on the Clarksville Chapter and raised the scorn of the Mother Chapter." *Id.* And the Clarksville chapter was still on probationary status. So the Clarksville Mongols needed to account for what happened. Kidnapping Priess allowed them to "learn what actually happened to" Chavez and to explain it to Chavez's chapter. *Id.* at 26193. The government established a benefit, and there was sufficient evidence to convict Hern and Santiago on Count 52.

F.

Boylston and Hern challenge their convictions on Counts 48 (accessory after the fact to attempted murder and assault with a dangerous weapon in aid of racketeering) and 59 (murder in aid of racketeering). Both convictions relate to violent crimes that were "in aid of racketeering." 18 U.S.C. § 1959.

The Violent Crimes in Aid of Racketeering (VICAR) statute prohibits the commission of certain violent crimes "for the purpose of . . . maintaining or increasing position in an enterprise engaged in racketeering." 18 U.S.C. § 1959(a). A person "is not guilty of a VICAR Crime when he acts 'alone and with no apparent connection to the gang.'" *Woods*, 14 F.4th at 556–57 (citation omitted). Instead, VICAR's "purpose element is met if the jury could find that an *animating purpose* of the defendant's action was to maintain or increase his position in the racketeering enterprise." *Id*. at 557 (citation omitted).

i.

Hern challenges his conviction on Count 48 for accessory after the fact to attempted murder and assault with a dangerous weapon in aid of racketeering. This conviction relates to the attempted murder and assault of Michael Finley, a member of the Iron Order Motorcycle Club.

The Mongols and Iron Order had a longstanding feud, stemming from an incident in which an Iron Order member shot and killed a Mongol in Colorado. And as of early July 2016, Humiston believed that the Iron Order was after him, because he had recently been in a bar fight with an Iron Order member. On July 14, 2016, a Mongol hang-around (Vlad Pytyak) was driving Humiston to Hern's house. Humiston told Pytyak to follow a person wearing a biker vest who had pulled out of the Iron Order's parking lot. This turned out to be Michael Finley. Finley pulled over to the side of the road, and he and Humiston got into a verbal altercation. Humiston grabbed a gun and shot Finley several times. Finley returned fire and hit Humiston. Pytyak drove Humiston to Hern's home, where Hern helped treat his wounds. Hern later told Humiston that the gun used to shoot Finley had been "disposed of." R. 2440, PageID 24247–48. Hern later told police he knew nothing about this incident. Over the ensuing weeks, Hern and other Clarksville Mongols helped Humiston hide from the police.

Hern argues that Humiston didn't violate VICAR by shooting Finley because the shooting wasn't in "aid of racketeering." It follows then, says Hern, that he couldn't be convicted of being an accessory after the fact.

Hern is wrong. A reasonable jury could conclude that Humiston shot Finley for the purpose of maintaining or increasing his position with the Clarksville Mongols. 18 U.S.C. § 1959(a). Humiston was a relatively new member of the Mongols prior to the incident. Humiston knew that the Iron Order was a rival club. He had been invited to be a prospect because he was a "hothead" and had been involved in a bar fight with the Iron Order a few weeks before. R. 2441, PageID 24570. A jury could infer that he shot Finley in an attempt to bolster his position within the Clarksville Mongols.

Hern says that Humiston's actions were unrelated to the Clarksville Mongols, but were instead done out of "personal vengeance" for the recent bar fight. Hern Br. at 38. But as the government explains, that theory is undercut by Humiston's admission that he didn't even know Finley's name when he attacked him, but he did believe Finley was an Iron Order member because he was seen exiting their clubhouse on a bike. These facts would permit a jury to infer that the attack was motivated by the feud between the two organizations rather than any personal grievance between Humiston and Finley.

There was sufficient evidence to convict Hern on Count 48.

ii.

Boylston challenges his conviction on Count 59 for murder in aid of racketeering. This conviction relates to the murder of Stephen Cole.

There is easily enough evidence to show that Boylston murdered Cole for the purpose of maintaining or increasing his position within the Clarksville Mongols. 18 U.S.C. § 1959(a). As described previously, Cole had disrespected Boylston by neither admitting to stealing Boylston's motorcycles nor reimbursing him for them. Cole even boasted to other Mongols that he would not pay Boylston for the bikes, in direct contradiction of his prior promise to do so. The district court explained, "Boylston could not leave the matter unaddressed for at least three reasons:

> (1) he risked being viewed as weak by other members of the club were he not to retaliate; (2) one of the motorcycles had been his father's (or had at least been in his possession for a while before he died); and (3) Boylston needed a running motorcycle to remain in good standing in the club, otherwise he would lose his top rocker and go back to probationary status.

R. 2556, PageID 26121. Reasons (1) and (3) relate directly to Boylston's position in the Clarksville Mongols, and it follows that he committed the murder in order to maintain or increase his position. What's more, a jury could believe that the murder produced an increase in rank. "[A]fter Cole's murder, Meyerholz became President" and "Boylston became Vice President." *Id.* at 26194.

There was sufficient evidence to convict Boylston on Count 59.

III. TRIAL ISSUES

Defendants raise a variety of issues related to the trial and its procedures. Where defendants failed to raise the issues below, we review for plain error. For plain error, a defendant must "show (1) error (2) that was obvious or clear, (3) that affected defendant's substantial rights[,] and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings." *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc) (citation modified).

A. Jury Empaneling

Boylston and Frazier argue that the district court erred by empaneling a semi-anonymous jury. We review this decision for an abuse of discretion. *United States v. Warman*, 578 F.3d 320, 343–44 (6th Cir. 2009).

"A district court may empanel an anonymous jury in any case in which the interests of justice so require." *Id.* at 343 (citing 28 U.S.C. § 1863(b)(7)). The decision to do so "is within the sound discretion of the trial court." *United States v. Lawson*, 535 F.3d 434, 439 (6th Cir. 2008) (citation omitted). Empaneling an anonymous jury is "appropriate as a safety precaution and as a means to avoid potential interference with the jury's ability to function." *Warman*, 578 F.3d at 344. We have stated that, "in general, a district court should not order the empaneling of an anonymous jury without (a) concluding that there is strong reason to believe the jury needs protection, and (b) taking reasonable precautions to minimize any prejudicial effects on the defendant and to ensure that his fundamental rights are protected." *United States v. Talley*, 164 F.3d 989, 1001 (6th Cir. 1999) (citation modified).

Prior to trial, the district court told the parties that it would be implementing measures to ensure the integrity of the trial, including potentially empaneling a semi-anonymous jury—a jury in which the court and counsel would know the names of jurors, but defendants and the public would not. The court invited the parties' thoughts on the measures. Defendants objected. The district court overruled the objections.

The district court didn't abuse its discretion. Its precautionary measures were limited in scope. The jury was only semi-anonymous, permitting counsel to know the names of jurors. What's more, the court protected defendants' rights in selecting the jury. *See United States v. Deitz*, 577 F.3d 672, 685 (6th Cir. 2009) ("In deciding to empanel an anonymous jury, the court must ensure that the defendant retains his or her right to an unbiased jury by conducting a voir dire designed to uncover bias as to issues in the cases and as to the defendant himself." (citation modified)). The district court explained, "[U]nlike the typical case where little is known about a prospective juror prior to the start of voir dire, the prospective jurors in this case were each required to complete an extensive questionnaire that was the result of a joint effort between the Court and the parties." R. 1502, PageID 7697. And the defendants' attorneys, together with the court, conducted a three-day voir dire.

The court also explained the anonymity to the jurors in a neutral manner that would not cause the jurors to draw negative inferences against the defendants. *See Deitz*, 577 F.3d at 685 (stating that the court must "provid[e] the jury a neutral and non-prejudicial reason for requiring that it be anonymous, so that jurors will refrain from inferring that anonymity was necessary due to the character of the defendant" (citation omitted)). The court told the jurors that they would not be referred to by their names, only their juror numbers, to "ensure that if there is media in this case, you—your name will not become public" and "ensure that you are not contacted directly by members of the media or that personal information about you is not exposed to the media." R. 2405, PageID 16848. Accordingly, the district court implemented the semi-anonymous jury in a manner designed to protect defendants' rights to a fair trial.

The court also adequately justified the use of a semi-anonymous jury. The court explained (to the parties, but not the jurors) that all the defendants except Stanley were alleged to be part of the Mongols; that the Mongols were a dangerous criminal entity "whose members have pleaded guilty to heinous acts of murder, attempted murder, drug trafficking, and other crimes"; and that, in this regard, the Mongols were "not dissimilar from" other motorcycle gangs "for whom trials before anonymous juries have been approved." R. 1502, PageID 7699 (citation modified). Further, the indictment "allege[d] a wide-ranging RICO conspiracy involving two murders, four kidnappings, a shooting, four assaults in aid of racketeering, assorted physical violence, and the threat of physical violence." *Id.* at 7700. "Some of those acts, according to the [i]ndictment, were intended to obstruct and interfere with the administration of justice and/or to intimidate and tamper with witnesses and informants." *Id.* That was sufficient to support the use of a semi-anonymous jury. *See Deitz*, 577 F.3d at 685.

Boylston argues that the district court erred by raising the issue of a semi-anonymous jury *sua sponte*, rather than requiring the government to move for one. But other circuits have held that district courts may raise this issue *sua sponte*. *See United States v. Shyrock*, 342 F.3d 948, 971 (9th Cir. 2003); *United States v. Hall*, 506 F. App'x 245, 251 (4th Cir. 2013); *United States v. Bowman*, 302 F.3d 1228, 1238–39 (11th Cir. 2002); *see also United States v. Branch*, 91 F.3d 699, 723–25 (5th Cir. 1996); *United States v. Edmond*, 52 F.3d 1080, 1089–94 (D.C. Cir. 1995) (per curiam). And Boylston offers no authority to the contrary. We see no reason to disagree with our sister circuits. After all, district courts have "inherent authority to manage the course of trials." *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984). And 28 U.S.C. § 1863(b)(7), which gives the court the authority to keep juror "names confidential in any case where the interests of justice so require," says nothing about requiring a government motion. The district court, moreover, sought the parties' input before making a final decision. We see no error in the district court's raising the issue of a semi-anonymous jury *sua sponte*.

Boylston next asserts that the semi-anonymous jury violated his constitutional rights in a variety of ways, most of which are repackages of his prior arguments. We operate against the backdrop that, while "[t]here may be instances in which an anonymous jury is empaneled in such a way as to jeopardize constitutional rights," "an anonymous jury is not a constitutional violation in and of itself." *Lawson*, 535 F.3d at 441.

Boylston asserts that the semi-anonymous jury violated his right to a "public trial, by an impartial jury." U.S. Const. amend. VI. That argument is foreclosed by our caselaw. We have held that "there is no constitutional right to a public jury. The Sixth Amendment provides defendants with a right to a public *trial* by an impartial jury, but it does not guarantee a right to a public *jury*." *Lawson*, 535 F.3d at 440. And Boylston does not dispute that he was tried in public.

Boylston then argues that the semi-anonymous jury eroded the "presumption of innocence" by providing the "distinct impression in the minds of jurors they were being called upon to judge a dangerous criminal." Boylston Br. at 22, 25. But as already explained, the district court provided the jurors with a sufficient, neutral justification for their anonymity that adequately safeguarded defendants' interests.

Finally, Boylston says that the empanelment of a semi-anonymous jury violated his right to effectively conduct voir dire. *See Morgan v. Illinois*, 504 U.S. 719, 729 (1992) ("[P]art of the guarantee of a defendant's right to an impartial jury is an adequate *voir dire* to identify unqualified jurors."). As previously explained, the jury was only semi-anonymous; counsel had the necessary information to conduct an adequate voir dire; and the parties conducted a three-day voir dire. Boylston's rights weren't violated.

The district court didn't abuse its discretion by empaneling a semi-anonymous jury.

B. Expert Testimony

Boylston, Frazier, and Santiago challenge the district court's decision to allow Darrin Kozlowski to testify at trial as an expert. We review the district court's decision for an abuse of discretion. *United States v. LaVictor*, 848 F.3d 428, 440 (6th Cir. 2017).

Prior to trial, the government provided notice that Kozlowski would testify as an expert on "Outlaw Motorcycle Gangs generally and on the Mongols Motorcycle Gang's criminal enterprise specifically." R. 865, PageID 2820. Kozlowski, a 28-year agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives, had spent his career investigating outlaw motorcycle gangs, including the Mongols, whom he successfully infiltrated between 2005 and 2008. The government indicated that Kozlowski would provide background information regarding the Mongols organization, its operations, and its structure. Defendants moved to exclude Kozlowski's testimony on the ground that he had no specific knowledge of the Clarksville Mongols' organization. The district court denied the motions, concluding that much of Kozlowski's intended testimony "is precisely the type of evidence" for which an expert is appropriate. R. 1315, PageID 6496. But, because Kozlowski didn't have personal knowledge regarding the Clarksville Mongols, the court would not permit him to testify as a "fact witness about the Clarksville Chapter." *Id.* at 6500. At trial, Kozlowski adhered to the district court's limitations, testifying as to outlaw motorcycle gangs and the Mongols organization generally and telling the jury that he had no specific knowledge regarding the Clarksville Mongols.

Pursuant to Federal Rule of Evidence 702, "[a]n expert's opinions may be admitted at trial only if he is qualified to give them and they are relevant to the case at hand." *United States v. Gray*, 121 F.4th 578, 584 (6th Cir. 2024). The opinions also "must be sufficiently 'reliable.'" *United States v. Reynolds*, 86 F.4th 332, 346 (6th Cir. 2023) (citation omitted).

We first consider qualification. "To be qualified, the expert must have specialized knowledge or skill about the subjects on which he seeks to opine." *Gray*, 121 F.4th at 584. Kozlowski easily clears this hurdle. As the district court explained, Kozlowski was "well-versed to talk about [outlaw motorcycle gangs] from a big picture perspective, and more specifically, the Mongols Motorcycle Club." R. 1315, PageID 6496. "[H]e was a Special Agent with the ATF for almost 30 years" and received training regarding outlaw motorcycle gangs in "1994, 1998, 2001, 2004, 2005, 2010, and 2014." *Id.* at 6497. He was an instructor on the subject both in the United States and around the world. "His background include[d] personal law enforcement experience with gangs, having authored more than 50 affidavits for search warrants and participated in the execution of 500 search warrants during his almost three decade long career." *Id.* Kozlowski also successfully infiltrated several outlaw motorcycle gangs, including the Mongols. Kozlowski's significant experience and training amply qualified him to testify as an expert. *See United States v. Ledbetter*, 929 F.3d 338, 349 (6th Cir. 2019).

Second, relevance. Kozlowski testified regarding the operations and structures of outlaw motorcycle clubs generally, including the Mongols Motorcycle Club. We have recognized that such testimony is relevant in cases involving organized crime. "Law-enforcement expertise is . . . relevant when it imparts evidence regarding the inner-workings of organized crime, which has been held to be a proper subject of expert opinion because such matters are generally beyond the understanding of the average layman." *United States v. Rios*, 830 F.3d 403, 413 (6th Cir. 2016) (citation modified). So, "an FBI agent in a case about organized crime may properly give expert testimony on the structure, the organization, and the rules of the organized-crime entity." *Id.* (citation modified). That's what Kozlowski did here, so his testimony was relevant.

Third, reliability. To be reliable, "a gang expert's testimony" must be "based on significant experience with the gang." *Id.* at 414. Here, because Kozlowski had no personal knowledge about the Tennessee chapter of the Mongols Motorcycle Club, he offered no opinion as to that chapter, instead testifying only to matters related to outlaw motorcycle clubs and the Mongols Motorcycle Club generally. He was more than qualified to offer such opinions, thus rendering his testimony reliable. *See Ledbetter*, 929 F.3d at 349.

In response, defendants press the point that Kozlowski had no personal knowledge regarding the Tennessee Mongols. But again, the district court did not allow Kozlowski to offer an opinion regarding the Tennessee chapter, nor did he do so at trial. The government used Kozlowski to set the table for the jurors on outlaw motorcycle clubs and the Mongols generally, and then marshalled a host of fact witnesses to testify to the defendants' involvement in the Clarksville Mongols and to show that they operated in a similar fashion as and under the umbrella of the Mongol Nation. We have approved of such a course before and do so again here. *See id.* ("This exact approach—eliciting expert testimony on a national gang and separately drawing a link to the local set—was approved of in *Rios*.").

The district court didn't abuse its discretion by admitting Kozlowski's testimony.

C. Bar Fight Evidence

Meyerholz challenges the admission of evidence of his participation in a bar fight. He says the evidence was irrelevant and prejudicial because the fight was not in furtherance of the RICO conspiracy. Because Meyerholz did not object during trial, we review for plain error. *See United States v. Nixon*, 694 F.3d 623, 628 (6th Cir. 2012).

Prior to trial, the government provided notice that it intended to present evidence of an assault at Rookie's Bar and Grill as an overt act for the RICO conspiracy. At trial, the testimony showed that Meyerholz and Boylston attacked an individual in the bar's parking lot, punching and kicking him until he was unconscious.

We need not consider whether admitting this evidence was an "obvious or clear" error because Meyerholz has not shown that any error affected his substantial rights. *Vonner*, 516 F.3d at 386 (citation omitted). He says only that the admission of the evidence "led to an emotionally based verdict," "confused the issues to be tried," and "distracted the jury from its primary objective—deciding the relevant counts in the indictment." Meyerholz Br. at 16. These assertions, bare as they are and made without legal or record support, are insufficient to carry Meyerholz's burden of showing "a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *Greer v. United States*, 593 U.S. 503, 507–08 (2021) (citation omitted). Much less do they demonstrate "a serious effect on the fairness, integrity, or public reputation of [the] judicial proceedings." *Id.* at 508 (citation modified). Accordingly, the district court did not plainly err by allowing evidence of the bar fight.

D. Text Messages

Frazier challenges the admission of two unredacted text messages. He argues that the messages were highly prejudicial because he used crude and offensive language in them.

A district court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Fed. R. Evid. 403. We review the court's Rule 403 balancing for an abuse of discretion. *United States v. Harvel*, 115 F.4th 714, 736 (6th Cir. 2024).

Here, the government sought to introduce the defendants' communications but acknowledged that many of their messages included offensive terms, including n****r. The government generally agreed to redact that word out of the communications, but it sought to include two specific uses by Frazier because they were highly probative of his state of mind. The district court denied Frazier's attempts to redact the epithet in those two specific situations, and the messages were introduced to the jury.

We need not decide whether there was any error in admitting this evidence because any error was harmless. *See* Fed. R. Crim. P. 52(a). "[W]e may not grant a new trial on the basis of non-constitutional trial error where we have a 'fair assurance' that the verdict was *not* 'substantially swayed' by the error." *United States v. Kettles*, 970 F.3d 637, 643 (6th Cir. 2020) (quoting *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)). We have that assurance here. First, the evidence against Frazier was overwhelming, and there is no realistic chance that two text messages unfairly prejudiced the jury's deliberations. Second, as the government explains, "the jury's acquittal of Frazier on Count 11 and its careful parsing of the special verdict on Count 31 shows exactly the opposite: that the jury, far from reflexively convicting him based on emotion and prejudice, was able to render a verdict reflecting a careful consideration of the evidence." Government Br. at 169 (citation omitted). And third, the judge instructed the jury to "evaluate the evidence carefully and . . . resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases." R. 2393, PageID 16623. "Jurors are presumed to follow instructions." *Neuhard v. United States*, 119 F.4th 1064, 1072 (6th Cir. 2024) (citation modified). Given that the jury convicted Frazier on some counts but not all, it follows that the jury followed the instructions here. For these reasons, any alleged error in admitting the text messages was harmless.

E. Trial Delay

i.

Boylston[4] and Meyerholz argue that a three-week delay between Humiston's direct examination and their cross-examinations violated their rights under the Confrontation Clause. We disagree.

A review of the relevant timeline helps to situate this claim. Several weeks into the trial, on August 16, 2022, the government called Robert Humiston, a government informant and former Mongol, as a witness. Humiston testified in part about his knowledge of the events surrounding the murder of Stephen Cole. Humiston was then cross-examined by two defendants (but not Boylston or Meyerholz), after which trial adjourned for the day. In the morning, the court learned that one of the defendants had tested positive for COVID-19, so, respecting the defendant's right to appear at trial, the court called a recess until August 23. Before the recess began, the court suggested that the affected defendant and his attorney discuss whether to waive his presence at trial to let the other defendants finish Humiston's cross-examination, but no waiver materialized. Then Meyerholz also contracted COVID-19, so the court delayed trial until all defendants could be present, ordering trial to resume on August 26. But then additional scheduling difficulties arose (including judge and juror unavailability), so the trial did not resume

[4] Frazier adopts Boylston's arguments by reference, *see* Fed. R. App. P. 28(i), but Frazier's minimal briefing seems to focus entirely on the mistrial issue, discussed *infra*, rather than the Confrontation Clause. Even if Frazier does bring a Confrontation Clause claim, it fails for the same reasons as Boylston's.

until September 6, 2022. All told, the recess resulted in a three-week break before Boylston and Meyerholz had the opportunity to cross-examine Humiston.

Before trial resumed, Boylston and Meyerholz moved for a mistrial based on a violation of their Confrontation Clause rights, exacerbated by the court's delay in giving cautionary instructions.[5] The court denied the motion, finding that no Confrontation Clause violation had occurred. When trial resumed, the court questioned the jurors about their ability to render a verdict based upon all the evidence. When all indicated their ability to continue, the court issued a cautionary instruction advising the jury to avoid forming any opinions until all the evidence had been seen. Boylston and Meyerholz objected to the language of the instruction.

We review a Confrontation Clause challenge de novo. *United States v. Henderson*, 626 F.3d 326, 333 (6th Cir. 2010). The Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. It guarantees "a face-to-face meeting with witnesses appearing before the trier of fact," *Coy v. Iowa*, 487 U.S. 1012, 1016 (1988), and "an adequate opportunity to cross-examine adverse witnesses," *United States v. Owens*, 484 U.S. 554, 557 (1988); *see also Davis v. Alaska*, 415 U.S. 308, 315–16 (1974); *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). Those protections were given here.

"[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (per curiam); *see also United States v. Fox*, 134 F.4th 348, 378–79 (6th Cir. 2025) ("The Sixth Amendment has not been construed to give criminal defendants absolute control over cross-examinations." (citation modified)). And "the Confrontation Clause is generally satisfied when the defense is given a full and fair opportunity to probe and expose [any] infirmities through cross-examination, thereby calling to

[5]A few days after the delay began, Boylston, Meyerholz, and the government submitted a joint motion regarding proposed cautionary instructions. The parties asked that the jury be brought back into court on August 23 (one week into the delay) to hear the instruction. Frazier then filed a motion opposing the suggested process as "inefficient" and "inconsiderate" and asked that the Court email the jurors instead and then read the instructions into the record when trial resumed. R. 2300, PageID 16046. The court then held a status conference where it declined to issue interim instructions but advised the parties that a cautionary instruction would be given when trial resumed.

the attention of the factfinder the reasons for giving scant weight to the witness' testimony." *Fensterer*, 474 U.S. at 22.

Boylston and Meyerholz do not contest that they cross-examined Humiston in open court. *See Coy*, 487 U.S. at 1016; *Crawford*, 541 U.S. at 50 (noting that "the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused"). So we focus on their ability to conduct cross-examination. Here, "defense counsel receive[d] wide latitude at trial to question" Humiston, which "[n]ormally" means "the right to confront one's accusers is satisfied."[6] *Pennsylvania v. Ritchie*, 480 U.S. 39, 53 (1987) (plurality opinion); *see also Fensterer*, 474 U.S. at 20. And the cross-examinations gave the jury the information necessary to assess the defense's theory of the case through an interrogation of Humiston's credibility, motives, and possible bias. So, no violation occurred. *See United States v. Sims*, 2025 WL 692346, at *7 (6th Cir. Mar. 4, 2025).

A review of the transcript shows why. Boylston's and Meyerholz's theory was that Christian Dykes killed Cole alone. But Humiston testified that Boylston and Meyerholz had separately admitted to him that they had killed Cole. Humiston also graphically described Cole's murder. The defense undermined this testimony in multiple ways. Over the course of the cross-examinations, Humiston admitted that he had not witnessed the murder, that none of his testimony was based on firsthand knowledge, and that no one could verify any of the conversations. He confirmed that he liked Cole, but that he and Boylston did not respect each other. He told the jury that he would face a lesser sentence if the government decided that he had given substantial assistance to the government. And counsel also showed that many of Humiston's statements were inconsistent or inaccurate. For instance, Humiston told police that

[6]Only Boylston suggests that the trial judge limited the scope of cross-examination in any way. In a footnote, he references an exchange where defense counsel asked Humiston whether a fact was significant enough to tell the jury; Humiston replied that "[t]here's plenty of things I could tell the jury, but I'm not allowed to bring up the things because it's not relevant." R. 2441, PageID 24510. The court then denied Boylston's counsel's request to instruct the witness to answer the questions asked. But this singular limitation did not undermine the effectiveness of Boylston's cross-examination, and in context, Humiston was merely repeating his understanding of the evidentiary rules. We thus cannot say that Boylston had no meaningful "opportunity" to effectively cross-examine Humiston, even if it was not "in whatever way . . . the defense might [have] wish[ed]." *Fensterer*, 474 U.S. at 20.

Boylston broke Cole's fingers, but Cole's fingers were not broken. And counsel pointed out that Humiston's direct testimony had not mentioned that fact to the jury. Finally, counsel also elicited responses from Humiston that supported the defense theory that Dykes was violent and unpredictable. For example, Humiston described Dykes as a "crazy vet who would get mad easily and [was] irritable" and explained that Dykes had once pulled out a gun and threatened to kill a member's mother-in-law when he was accused of being a snitch. R. 2441, PageID 24423. All told, the defense's cross-examination "full[y] . . . probe[d] and expose[d] the[] infirmities" of Humiston's testimony. *Fensterer*, 474 U.S. at 22.

Boylston and Meyerholz object to this analysis. They contend that the delay before they were able to cross-examine Humiston was itself a violation of their Confrontation rights because it permitted Humiston's graphic testimony to cement in the juror's minds, such that any ensuing cross-examination was ineffective. We disagree. Although immediate cross-examination may be most effective, it does not follow that any delay before cross-examination nullifies the opportunity for effective examination. Nor do we think that the particular delay here had that effect. In context, the cross-examination was still effective for the reasons above. And we agree with the district court that it would be unduly "speculat[ive]" to assume otherwise. R. 2324, PageID 16273. The jurors were repeatedly instructed not to draw any conclusions until they had heard all the testimony.[7] *Cf. Samia v. United States*, 599 U.S. 635, 646 (2023) (noting that a jury "can be relied upon to follow the trial judge's instructions" to avoid a Confrontation violation). They had also seen the back-and-forth between direct and cross over the course of almost one hundred witnesses and knew the importance of cross-examination for discerning credibility. And they had listened as two other defendants cross-examined Humiston immediately before the recess. So although those examinations did not touch on Cole's murder, the jury would not have been left with the impression that everything Humiston said during his direct examination should be automatically trusted.

[7] Boylston (but not Meyerholz) objects to the timing and contents of the court's instruction after the trial delay, but the court's instruction went to the substance of the concern—namely, that the jury would not fairly consider all the evidence. And it was not an abuse of discretion for the judge to question and instruct the jury immediately upon resuming trial.

We also note that the bulk of the delay arose due to a competing constitutional concern—the need to protect the rights of the sick defendants (including Meyerholz) to be present at trial. And there is no allegation of prosecutorial or judicial gamesmanship here. *Cf. Taylor v. Illinois*, 484 U.S. 400, 410 n.14 (1988) ("The defendant's right[] . . . to be confronted with adverse witnesses [is] designed to restrain the prosecution by regulating the procedures by which it presents its case against the accused." (citation omitted)). It is also possible that the three-week delay could have made cross-examination more effective—jurors might be more likely to remember the more-recently presented cross than the three-week-old direct when they enter deliberations. So we cannot assume that the delay changed the efficacy of the cross-examination to a constitutional degree.

Boylston and Meyerholz cite neither caselaw nor history showing that the Confrontation Clause requires a different result. As for history, they cite none at all. And although the government's sources suggest that, in some trials around the time of the Founding, either party might have been allowed to interrupt the other's witnesses and present alternative testimony on the spot, *see* Randolph N. Jonakait, *The Origins of the Confrontation Clause: An Alternative History*, 27 Rutgers L.J. 77, 138 n.267 (1995), we are not convinced that these sources show that such a procedure was uniformly followed or is constitutionally required. If it were, then the eighteenth-century innovation permitting an orderly presentation of the prosecution's entire case, followed by the defendant's, would be constitutionally suspect. *See* John H. Langbein, *Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources*, 50 U. Chi. L. Rev. 1, 130–31 (1983) (describing the move from "rambling altercation" to an "articulation of sequence" in trial procedure). Neither Boylston nor Meyerholz make that claim. And the Supreme Court's reasoning in related cases suggests skepticism. *See Taylor*, 484 U.S. at 411 (noting that "[t]he trial process would be a shambles if either party had an absolute right to control the time and content of [a] witness['s] testimony" and that neither party "may insist on the right to interrupt the opposing party's case"). Nor do the cited historical sources shed light on any constitutionally required order of preference between the competing demands that faced the trial judge here: protecting the defendants' interest in prompt putative cross-examination; protecting the defendants' rights to be present at trial; and preventing the spread of communicable disease.

In sum, we find the historical record presented to us too slim to suggest that the Constitution requires immediate confrontation, much less that any preference for immediacy cannot yield to competing constitutional and public health demands.

As for the caselaw, defendants cite only one case that analyzes a delay between direct and cross-examination under the Confrontation Clause. *See* Boylston Br. at 40 n.17 (citing *Loomis v. Warden, Noble Corr. Inst.*, 2021 WL 1182681, at *8 (S.D. Ohio Mar. 29, 2021), *report and recommendation adopted,* 2021 WL 1530264 (S.D. Ohio Apr. 19, 2021)). But that case *rejected* the defendant's Confrontation Clause claim. *See Loomis*, 2021 WL 118281, at *8 (noting that, despite a delay between direct and cross, "[t]he record demonstrates [that] appellant was given a full and fair opportunity to explore and expose any infirmities in [the witness's] testimony"). Other than *Loomis*, they cite one Supreme Court and two state appellate cases that generally discuss the value of prompt timing in cross-examination. *See* Boylston Br. at 34–35 (citing *Perry v. Leeke*, 488 U.S 272, 282 (1989); *Schaffer v. State Bd. of Veterinary Med.*, 237 S.E.2d 510, 512 (Ga. App. 1977) and *Modesitt v. State*, 578 N.E.2d 649, 651 (Ind. 1991)); Meyerholz Br. at 21 (citing *Modesitt*, 578 N.E.2d 649). But none of these cases involved a defendant's rights under the Confrontation Clause. Even if timing may influence the effectiveness of cross-examination as a general matter, *cf. Perry*, 488 U.S. at 283, that is not the relevant question under the Constitution. We do not ask whether "cross-examination [was] effective in whatever way, and to whatever extent, the defense might wish." *Fensterer*, 474 U.S. at 20. We ask whether there was "an *opportunity* for effective cross-examination." *Id.* For all the reasons discussed above, Boylston and Meyerholz had a "full and fair opportunity to probe and expose [any] infirmities through cross-examination." *Id.* at 22. That was enough to satisfy the Confrontation Clause. *Id.*

ii.

Boylston, Meyerholz, Santiago, and Frazier argue that the district court deprived them of a fair trial when it failed to grant a mistrial after various delays.[8] But the district court did not abuse its "wide discretion" when it found that no manifest necessity required a mistrial. *United*

[8]Meyerholz and Boylston also argue that the court should have granted a mistrial based on the violation of their Confrontation rights. But for the reasons already explained above, there was no Confrontation Clause violation. Boylston also makes a related severance argument, and it fails for the same reasons.

States v. Van Dyke, 605 F.2d 220, 227 (6th Cir. 1979) (noting that a district court's "discretion in the scheduling of a trial" will not be disturbed "in the absence of manifest abuse"). To show an abuse of discretion, the defendants must show that they "suffer[ed] 'actual prejudice.'" *United States v. Braxton*, 2022 WL 910571, at *3 (6th Cir. Mar. 29, 2022) (quoting *United States v. Martin*, 740 F.2d 1352, 1360–61 (6th Cir. 1984)).

"The power of a judge to declare a mistrial . . . must 'be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes.'" *United States v. Gantley*, 172 F.3d 422, 429 (6th Cir. 1999) (quoting *United States v. Perez*, 22 U.S. (9 Wheat.) 579, 580 (1824)). This trial, which lasted for 38 days over three and a half months,[9] is not one of those plain and obvious cases.

There is no "mechanical [mistrial] formula," so we must consider "the varying and often unique situations arising during the course of a criminal trial." *United States v. Dennison*, 73 F.4th 70, 78 (1st Cir. 2023) (quoting *Illinois v. Somerville*, 410 U.S. 458, 462 (1973)). Defendants do not contest that COVID-19 "primarily" caused the trial delays. Frazier Br. at 83; *see United States v. Frazier*, 625 F. Supp. 3d 752, 755 (M.D. Tenn. 2022). And Defendants do not argue that the judge's prescheduled judicial conference or the two days of juror unavailability otherwise required a mistrial. As the district court noted, COVID-19 struck multiple times during the trial, "affecting jurors, Deputy Marshals, Defense counsel and/or their staff, and members of the prosecution team." *Frazier*, 625 F. Supp. 3d at 755. Each time, "the Court went into recess for the period of time recommended by the Centers for Disease Control . . . to prevent further spread among the trial participants." *Id*. It was within the trial court's sound discretion to "determine what safety measures [we]re necessary to protect the judge, court personnel, the parties, the lawyers, the jurors, and the audience in and around the courtroom." *United States v. Smith*, 2021 WL 5567267, at *2 (6th Cir. Nov. 29, 2021). We see no abuse of that discretion

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[9]Defendants state that "seven[]" delays occurred. Boylston Br. at 37–38; Santiago Br. at 58–60. But one of these delays merely involved the selection of additional alternate jurors at the start of trial, and one was a prearranged adjournment for the week of Independence Day. The remaining delays were as follows: June 13–17 (COVID-19 spike in county and juror COVID-19 exposure), June 23–27 (defense counsel contracted COVID-19), July 11–13 (two of three Assistant United States Attorneys contracted COVID-19), August 9–12 (three defendants exposed to COVID-19 and quarantined), August 17–September 6 (two defendants tested positive for COVID-19, prearranged judicial conference, and two days of juror unavailability).

here. Many courts have reached similar conclusions. *See United States v. Smith*, 44 F.3d 1259, 1267–69 (4th Cir. 1995) (affirming denial of a mistrial after 32-day midtrial recess stemming from defendant's illness); *United States v. McDonald*, 166 F.4th 440, 443, 448–49 (4th Cir. 2026) (affirming denial of a mistrial for similar reasons after delays totaling 51 days); *United States v. Thomas*, 451 F.3d 543, 546–47 (8th Cir. 2006) (affirming denial of a mistrial after a 24-day delay due to juror illness); *People v. Breceda*, 290 Cal. Rptr. 3d 899, 914–23 (Cal. Ct. App. 2022) (affirming denial of a mistrial after COVID-19 delays totaling more than 73 days); *State v. Henderson*, 309 A.3d 1208, 1218–21 (Conn. 2024) (affirming denial of a mistrial after COVID-19 caused 25-day interruption in the jury's deliberations).

Nor can defendants show actual prejudice from the trial scheduling in this case. *See Van Dyke*, 605 F.2d at 227; *Braxton*, 2022 WL 910571, at *3 (noting that inconvenience alone cannot establish actual prejudice). All parties were "fully aware" that there could be COVID-19 related disruptions to the schedule. R. 2556, PageID 26129. And "th[e] trial was always expected to last approximately three months." *Id*. at 26130–31 (citation omitted). While this trial certainly involved complex facts and material, *see id.* at 26102 (noting that nearly "100 witnesses testified and more than 1,200 documents were introduced"), that would have been true even without any delays, *Smith*, 44 F.3d at 1268 ("Inherent in the presentation of any trial lasting a period of days or months is the difficulty caused by the passage of time."). And "the jurors in this case ha[d] taken copious notes" and had "pay[ed] close attention as the evidence [was] admitted."[10] *Frazier*, 625 F. Supp. 3d at 755.

The court also took measures to prevent any prejudice, including questioning jurors about their continued impartiality after the delays, questioning them about outside influence, instructing them to keep an open mind, and giving counsel additional time for closing arguments to refresh the jury's recollection of key points in the trial. *Id.* at 759–60. In light of these measures, the trial court did not abuse its discretion in denying the requests for a mistrial. *See Thomas*, 451 F.3d at 547 (noting that no mistrial was warranted when "the district court

[10] Santiago's brief includes a brief overview of what he considers to be "juror issues," Santiago Br. at 61 n.17, but a review of these examples does not convince us that the district court's firsthand observations were incorrect. *See United States v. Segines*, 17 F.3d 847, 851 (6th Cir. 1994) (noting that a defendant is entitled to "a fair trial, not a perfect one, because an error-free, perfect trial is not humanly possible" (citation modified)).

reminded the jurors that they were bound by the court's original instructions, that they were not to discuss the case with anybody, and that they should keep an open mind until the case concluded").

"[A] mistrial is a drastic remedy." *Smith*, 44 F.3d at 1268. Taking all the circumstances into account, that remedy was not warranted here.

F. Severance

i.

Meyerholz challenges the denial of his pretrial motion for severance. Normally, we review the denial of a severance motion for an abuse of discretion. *United States v. Caver*, 470 F.3d 220, 237 (6th Cir. 2006). Here, however, the government asks us to treat Meyerholz's severance challenge as waived because he failed to renew his pretrial severance motion during the trial. We have in some cases concluded that failing to renew a pretrial severance motion constitutes waiver. *See, e.g.*, *United States v. Willis*, 232 F. App'x 527, 533 (6th Cir. 2007); *United States v. Swift*, 809 F.2d 320, 323 (6th Cir. 1987). Yet, in others, we have reviewed the trial court's decision for plain error. *See United States v. Burks*, 2024 WL 4250334, at *10 (6th Cir. Sep. 20, 2024); *United States v. Fields*, 763 F.3d 443, 456 (6th Cir. 2014); *United States v. Anderson*, 89 F.3d 1306, 1312 (6th Cir. 1996). We need not resolve the arguable conflict in our caselaw today because Meyerholz's challenge fails even under the plain error standard. To satisfy that standard, Meyerholz must show: (1) error; (2) that was plain; (3) that affected his substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Vonner*, 516 F.3d at 386. Meyerholz cannot establish a plain error.

"The general rule in conspiracy cases is that persons indicted together should be tried together." *United States v. Smith*, 197 F.3d 225, 230 (6th Cir. 1999). "[T]o escape the general rule, the defendant must carry the heavy burden of showing specific and compelling prejudice resulting from a joint trial which can be rectified only by separate trials." *Id.* (citation omitted); *Fields*, 763 F.3d at 457 (noting that a defendant must "point to specific, substantial, undue, or compelling prejudice" (citation omitted)). And the Supreme Court has held that "a district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

Meyerholz claims that he was prejudiced in two ways. Both theories rest on "mere speculation" and thus do not establish undue prejudice. *Thomas v. United States*, 849 F.3d 669, 676 (6th Cir. 2017). First, he claims that the evidence of the Bradley murder necessarily confused and prejudiced the jury. Meyerholz offers nothing to support this contention besides a generalized allegation that the evidence was "remarkable." Meyerholz Br. at 11. We have long held—and Meyerholz concedes—that the mere introduction of inflammatory evidence "against one defendant, not directly involving another codefendant (and with which the other is not charged)" is not sufficient "in and of itself, [to] show substantial prejudice in the latter's trial." *United States v. Gallo*, 763 F.2d 1504, 1525 (6th Cir. 1985); *United States v. Seale*, 947 F.2d 946 (6th Cir. 1991) (table); *see also Ledbetter*, 929 F.3d at 345–46. That's true even if the trial involved evidence of "gruesome and brutal murders" by other defendants. *Gallo*, 763 F.2d at 1525 (citation modified).

Second, Meyerholz claims prejudice inhered in the large number of codefendants and the length of the trial before his crimes were presented to the jury. But this argument also fails. We have routinely upheld joint trials for seven or more codefendants. *See, e.g.*, *United States v. Anderson*, 353 F.3d 490, 502–03 (6th Cir. 2003) (holding that the trial court did not abuse its discretion in denying severance with twelve defendants); *United States v. Beaver*, 211 F.3d 1270, at *2 (6th Cir. 2000) (table) (noting that trial court did not abuse its discretion in denying severance with seven defendants); *Wogaman v. Wells*, 884 F.2d 1393, at *3–4 (6th Cir. 1989) (table) (same). And Meyerholz likewise points to no caselaw requiring severance when a defendant's crimes are presented to the jury at the end of a joint trial rather than at the beginning.

In any case, "limiting instructions[] often will suffice to cure any risk of prejudice," even in multi-defendant cases like this one. *Zafiro*, 506 U.S. at 539; *United States v. Driver*, 535 F.3d 424, 427 (6th Cir. 2008). Here, the jury was repeatedly instructed to consider the evidence against each defendant for each conspiracy separately. And the jury followed those instructions by differentiating among defendants in its verdicts. *See Burks*, 2024 WL 4250334, at *10.

Compare, e.g., R. 2369, PageID 16392–93 (finding Frazier guilty on Count Twenty-Six of distributing less than five grams of methamphetamine), *with* R. 2375, PageID 16440 (finding Hern not guilty on Count Twenty-Six of distributing less than five grams of methamphetamine).

The district court didn't plainly err by denying Meyerholz's motion to sever his trial.

ii.

Frazier challenges the denial of his motion to sever Counts 6–11 (those involving his kidnapping and murder of Stephanie Bradley) from the rest of the trial, as well as the decision not to sever Counts 55–59 (those involving Stephen Cole's murder, with which Frazier was uninvolved) from the rest of the trial. Unlike Meyerholz, Frazier did renew his severance motion at trial. So we review the denial of his motion for an abuse of discretion. *Caver*, 470 F.3d at 237.

As before, inflammatory evidence "against one defendant, not directly involving another codefendant (and with which the other is not charged)" is not alone sufficient to "show substantial prejudice in the latter's trial"—even when the evidence involves "gruesome and brutal murders." *Gallo*, 763 F.2d at 1525 (citation modified). So any generalized objections to the Cole evidence fail.

Perhaps recognizing the need for specific prejudice, Frazier also alleges that during trial the government improperly linked the murders of Bradley and Cole in two specific ways that caused jury confusion. First, Frazier points out that the government's opening statement claimed that "Frazier and others" kidnapped and killed Bradley, and then continued that "they weren't just violent at their inception. They were violent until the bitter end with their conduct culminating in one vicious final act, the kidnapping and murder of Stephen Cole." R. 2430, PageID 21638–39. Frazier argues that because the antecedent of "they" includes Frazier and other members of the chapter, the jury might have inferred that chapter members beyond those directly involved in the Cole murder had a propensity for violence, making it "more likely that Frazier committed the crimes with which he was charged." Frazier Br. at 69. Second, in closing argument, the government said that the "crimes charged as VICARs in this case would not have occurred but for the defendants' association with the Clarksville Mongols. Cole and Bradley would still be alive." R. 2443, PageID 24986–87. Frazier argues that both statements linked the two murders together, such that if the jury believed that Cole was murdered by a member of the chapter, it was more likely that Bradley was too.

As a general matter, defendants cannot only rely on opening or closing statements as evidence of confusion because they are not evidence at all. *United States v. Karasarides*, 159 F.4th 972, 988 (6th Cir. 2025) ("[C]losing arguments aren't evidence. They don't tell us much beyond how counsel conceptualized the evidence or how counsel summarized the evidence to the jury." (citation omitted)), *cert. denied* 146 S. Ct. 1827 (2026). In *Karasarides*, we rejected an argument like Frazier's, although counsel's closing argument held greater potential for harm. There, the defendant and his codefendant were charged with the *same* conspiracy. In closing, the codefendant's attorney asked for jury nullification, which risked indicating his guilt. *Id.* Even so, we held that the defendant was not entitled to severance. *Id.* at 988–89. Here, Frazier had not even been charged with the murder that he alleges prejudiced him. If in *Karasarides* there was no prejudice in trying two defendants together for the same crimes, even when the codefendant indicated guilt by asking for jury nullification, then there is no prejudice here.

Likewise, even when codefendants' testimonies are mutually exclusive and incriminate each other, we have not found an abuse of discretion in denying severance absent a specific showing that the jury was confused. *United States v. Critton*, 43 F.3d 1089, 1098 (6th Cir. 1995) (holding that "[t]he mere fact that codefendants will present antagonistic defenses does not mandate severance: severance is justified only if presentation of these defenses in the same trial will mislead or confuse the jury"). And Frazier presents no other evidence of confusion here.

In any case, as we explained above, the jury received—and followed—instructions to consider the evidence against each defendant for each conspiracy separately. And even if there were evidence of jury confusion, that evidence "must be balanced against society's need for speedy and efficient trials." *United States v. Moore*, 917 F.2d 215, 220 (6th Cir. 1990). The two statements made by the government were certainly not sufficiently confusing or prejudicial to outweigh these concerns.

The district court did not abuse its discretion in denying Frazier's severance motions.

G. Theory of Defense Instructions

Boylston and Stanley argue that the district court erred by refusing to give a theory-of-defense instruction. We review the district court's instructional decisions for an abuse of discretion. *United States v. Reed*, 72 F.4th 174, 184 (6th Cir. 2023). "District courts have broad discretion in drafting jury instructions and, when viewing the instructions as a whole, we will not reverse the trial court unless the jury charge fails to accurately reflect the law." *Id.* (citation modified).

The district court generally must "instruct the jury on the theory of defense." *United States v. Chowdhury*, 169 F.3d 402, 407 (6th Cir. 1999). But "it is not error to refuse to give instructions which merely represent a defendant's view of the facts of the case, rather than a distinct legal theory." *Id.* (citation modified).

Although Boylston and Stanley proposed theory-of-defense instructions, those instructions merely stated that the defendants denied the charges against them and that the government had not proven them guilty beyond a reasonable doubt. When the district court told counsel that the instructions were deficient because they didn't identify a theory of defense, Boylston and Stanley acknowledged the deficiency but didn't correct it. So the court declined to provide theory-of-defense instructions. Given the proposed instructions didn't provide "a distinct legal theory," *id.*, the district court didn't abuse its discretion by declining to provide them.

H. Jury Instructions

i.

Next, Forrester, Santiago, and Frazier argue that the district court erred in instructing the jury on Count 1. That count charged the three with conspiring to participate in a RICO enterprise.

When a defendant is charged with participating in a RICO enterprise, the government must prove, among other things, "the existence of an enterprise which affects interstate or foreign commerce." *United States v. Fowler*, 535 F.3d 408, 418 (6th Cir. 2008). "[E]nterprise" here "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). But we have held that when a charge of conspiracy to participate is at issue, the government need only prove "an agreement to associate with and participate in" an enterprise. *Rich*, 14 F.4th at 493. Because agreements are forward-looking, the actual existence of the enterprise at the time of the illegal agreement is not a necessary element. *Id.*

The third superseding indictment charged that "[a]t all relevant times," the Clarksville Mongols Chapter "operated in the Middle District of Tennessee and elsewhere." R. 485, PageID 1322–23. And the "Clarksville Mongols . . . constituted an 'enterprise,' as defined by . . . Section 1961(4), that is, a group of individuals associated in fact," which "engaged in, and its activities affected, interstate and foreign commerce." *Id.* at 1323. When it instructed the jury, the district court recited the element as whether the "Clarksville Mongols existed *or would exist* as an enterprise during the relevant dates." R. 2393, PageID 16647 (emphasis added). Forrester, Santiago, and Frazier objected to the use of this "future-tense" language. *Rich*, 14 F.4th at 491–92 (upholding the use of "or . . . would exist" instructions (citation modified)). Although they agreed that such language was within the bounds of the statute, *id.*, they understood it to be outside the bounds of the indictment. The district court overruled the objection and gave the instruction.

The requirement that the instructions match the grand jury's indictment protects three constitutional rights. First, the specification of the charges before trial protects the "Sixth Amendment's right to fair notice of the criminal charges against which one will need to defend." *United States v. Combs*, 369 F.3d 925, 935 (6th Cir. 2004). Next, it prevents a defendant from being twice placed in jeopardy for the same offense. *Id.* But, most obviously, it operationalizes the Fifth Amendment's guarantee that "[n]o person . . . be held to answer for a[n] . . . infamous crime, unless on a presentment or indictment of a [g]rand jury." U.S. Const., amend. V; *Combs*, 369 F.3d at 935. Though challenges to jury instructions are generally reviewed for an abuse of discretion, *United States v. Sherman*, 168 F.4th 417, 425 (6th Cir. 2026), an argument that the instructions did not match the indictment is reviewed de novo, *Rios*, 830 F.3d at 427; *United States v. Kuehne*, 547 F.3d 667, 682 (6th Cir. 2008).

Instructions can fail to match an indictment in one of three ways. *Kuehne*, 547 F.3d at 683.[11] A court or prosecutor might "literally" "alter[]" "the charging terms of the indictment," such that the jury is asked to convict the defendant of a new, distinct offense. *Combs*, 369 F.3d at 935 (citation omitted). That would be an actual amendment. Second, when that alteration is "more subtle" or is one done in "effect[]," such that "there is a *substantial likelihood* the defendant was convicted of" a distinct offense, we call the amendment constructive. *Id.* at 936 (citation modified). Uniting actual and constructive amendments is the fact, or the risk, that the defendant is being convicted of a different legal "charge[]" or "offense" than was returned by the grand jury. *Id.* at 935–36 (citation modified). Any amendment, actual or constructive, "infringe[s] on the Fifth Amendment's grand jury guarantee" and so is "per se prejudicial." *Kuehne*, 547 F.3d at 683 (citation modified).

The third species of deviation, a variance, is instead an instance in which "the evidence offered at trial proves facts materially different from those alleged in the indictment." *Combs*, 369 F.3d at 935–36 (citation omitted). Here, the legal charge is identical to the one made in the indictment, but the facts that prove the charge have changed between the indictment and instruction. We grant relief from variances only when "the defendant shows prejudice to his ability to defend himself at trial, to the general fairness of the trial, or to the indictment's sufficiency to bar subsequent prosecutions."[12] *Kuehne*, 547 F.3d at 683 (citation omitted).

We have used a variety of adjectives to describe the line between a constructive amendment and a variance, among them "blurry, sketchy, and shadowy." *United States v. Davis*, 970 F.3d 650, 659 (6th Cir. 2020) (citation modified). Indeed, the three defendants here disagree on how to classify the alleged discrepancy between the indictment and the instructions. Frazier claims a constructive amendment only; Forrester claims either one; and Santiago claims both.

[11]The government asks us to overrule the constructive amendment doctrine. The government's plea is arguably foreclosed by numerous decisions of this court that have embraced the doctrine. *See, e.g.*, *Combs*, 369 F.3d at 935–37; *United States v. Belcher*, 92 F.4th 643, 649 (6th Cir. 2024). In any event, there is no need to decide the question here, since the government is correct that no constructive amendment occurred.

[12]Similarly, when prejudice makes a variance reversible error under the Fifth Amendment, we have said that the Sixth Amendment regards that variance as a constructive amendment. *United States v. Budd*, 496 F.3d 517, 521 (6th Cir. 2007) (holding that variances that "infringe[] too strongly upon the defendant's Sixth Amendment right to be informed of the nature and cause of the accusation" are constructive amendments (citation omitted)).

Our caselaw treats the essential difference as whether the instructions risked convicting the defendant for a different offense (a constructive amendment) or whether they allowed a conviction for the same offense by way of different facts (a variance). *Id.*

Conversely, when the government proves that a crime was committed by an "alternative method[]," *Martin v. Kassulke*, 970 F.2d 1539, 1543 (6th Cir. 1992), a variance has occurred. In *Martin*, for instance, the defendant was indicted for rape. *Id.* at 1541. Kentucky law defined rape as either sexual intercourse "by forcible compulsion" or "with another person . . . incapable of consent because he is physically helpless." *Id.* (citation modified). While the indictment listed only the "forcible compulsion" method, the instructions included both routes to conviction. *Id.* at 1542. Because the statute provided for "one offense . . . with two different methods of commission," rather than two separate offenses, this discrepancy was a variance rather than an amendment. *Id.* at 1543–46.

Here, no constructive amendment occurred. The addition of the future-tense language in the instructions did not change the offense these defendants were charged with. The indictment charged conspiracy to participate in a RICO enterprise. The instructions accurately described the elements of conspiracy to participate in a RICO enterprise. *See Rich*, 14 F.4th at 493. No risk exists that "the defendant was convicted of an offense other than that charged in the indictment." *Combs*, 369 F.3d at 936 (citation modified).

No variance occurred either because the indictment is not inconsistent with the "future-tense" language used in the instructions. The defendants focus single-mindedly on the use of "at all relevant times" in the charging document. But that phrase appears in a different sentence than the allegation that the Clarksville Mongols were a RICO enterprise. *See* R. 485, PageID 1322–23. The indictment merely alleged that the Clarksville Mongols "operated in the Middle District of Tennessee and elsewhere" "[a]t all relevant times." *Id.* The temporal quantification did not directly modify the allegation that the "Clarksville Mongols . . . constituted an 'enterprise.'" *Id.* at 1323. More generally, the indictment was clear that it charged a conspiracy offense. "Count One" is titled "Racketeering *Conspiracy*." *Id.* at 1322 (emphasis added). The operative language charges that each of the defendants "did conspire to violate . . . Section 1962(c)." *Id.* at

1328. So the defendants were on notice that they had been charged with *agreeing to* participate in the Clarksville Mongols. And the indictment identified them as "*prospective* and/or *founding* members of the" Clarksville Mongols since "March 2015." *Id.* at 1324 (emphasis added). Even "[b]efore receiving their Patches, they were prospective/probationary associates." *Id.* at 1324–25. For all of these reasons, the indictment was not inconsistent with the instructions used.

Even if a variance occurred, no prejudice accrued to the defendants. Forrester's and Santiago's arguments to the contrary focus on their planned defense to the conspiracy charge.[13] They state that because they understood the indictment to charge that their participation began no sooner than the enterprise's existence, they centered their defenses to the charge, at least in part, on the contention that the Clarksville Mongols did not exist as an enterprise at the time of their involvement.

But this planned defense was never viable, with or without the future-tense jury instructions. The argument depends on the idea that the Clarksville Mongols could not have existed as a RICO enterprise until they were "officially formed," recognized by Mongols Nation, or had "rules, laws, procedures, and formality on some level." Forrester Br. at 20. That is not so. A RICO enterprise need not be a "legal entity" under state or federal law if an "associat[ion] in fact" exists. 18 U.S.C. § 1961(4). By the same token, the reach of RICO does not hinge on the finer points of Mongol Nation's patching process or the admission status of a prospective chapter. Because the defendants' argument was not a viable defense irrespective of the discrepancy between the indictment and the instructions, no prejudice is present. It follows that any variance is not material. Nor have the defendants' Sixth Amendment rights to fair notice of the charges been violated.

ii.

Next, Frazier challenges his convictions on Counts 6 and 7 on four separate grounds. Count 6 charged Frazier with kidnapping under federal law. 18 U.S.C. § 1201(a)(1). Count 7 charged committing a violent crime (kidnapping) in aid of racketeering activity (VICAR). *Id.*

[13]Frazier makes only a constructive amendment argument and does not argue that a variance was material. But the defense Frazier describes is otherwise identical to Forrester's and Santiago's.

§ 1959(a)(1). Frazier argues that the jury instructions constructively amended both charges. He also contends that Count 6 was duplicitous and that the underlying statute is unconstitutional. None of these arguments has merit.

Count 6. As relevant here, federal law prohibits the "unlawful[]" "kidnap[ping]" of a person "for ransom or reward or otherwise" when "the offender . . . uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense." 18 U.S.C. § 1201(a)(1). Section 1201(a)'s "or otherwise" language encompasses "*any* reason which would in *any* way be of benefit" to the kidnapper. *United States v. Small*, 988 F.3d 241, 250 (6th Cir. 2021). Violations of Section 1201(a) are punishable by "any term of years or for life and, if the death of any person results . . . by death or life imprisonment." 18 U.S.C. § 1201(a).

Count 6 charged Frazier, in one count, with kidnapping Bradley and Cooper "for the purpose of witness intimidation and murder," causing Bradley's death, and using an instrumentality of interstate or foreign commerce in doing so, "to wit: cellular telephones . . . in the course of the kidnapping." R. 485, PageID 1347; *see* 18 U.S.C. § 1201(a)(1).

Before trial, Frazier initially requested an instruction on Count 6 seemingly asking that the jury be instructed that the government needed to prove that he had kidnapped the women "for the purpose of intimidation, retaliation, and murder."[14] R. 1569, PageID 8648. But he later substituted a request for a different instruction—that he kidnapped Cooper and Bradley "for ransom or reward." R. 1915-1, PageID 11051; R. 2148, PageID 14494. The government preferred "for any reason." R. 1915-1, PageID 11052. After discussion, the district court proposed using "for ransom, reward, or for any reason which would in any way be of benefit." R. 3024, PageID 32121. When no party objected to this proposed language, the district court used it. R. 2393, PageID 16704.

Constructive Amendment. First, Frazier argues that the discrepancy between the purpose language in the indictment, "for . . . witness intimidation and murder," and that of the

[14]The actual requested instruction on the mens rea element was nonsensical. It read in full: "[t]he defendant for the purpose of intimidation, retaliation, and murder." R. 1569, PageID 8648.

instructions, "for ransom, reward, or for any reasons which would in any way be of benefit," constituted a constructive amendment. He argues that because he timely objected to the government's proposed language, he preserved his constructive amendment claim. But Frazier arguably waived this objection by first proposing, and then withdrawing, a request for the language he now says the instructions should have included. Or perhaps he invited the error through his second proposed instructions ("for ransom or reward"), which did not track the language of the indictment and were similar to the ones given. At a minimum, his objection to the government's proposed language was not sufficient to preserve the claim he advances now. An objection to jury instructions "must inform the court of the specific objection and the grounds [therefor]." Fed. R. Crim. P. 30(d). Frazier's ultimate objection to the instruction did not mention the indictment's "witness intimidation and murder" language or otherwise mention the possibility of a constructive amendment or variance. *See* R. 1915-1, PageID 11051. So, at the least, Frazier must satisfy the plain error standard on appeal. And he cannot carry that "difficult" burden. *See United States v Ramamoorthy*, 949 F.3d 955, 960 (6th Cir. 2020) (citation omitted).

As Frazier notes, the jury instructions "tracked this [c]ourt's case law interpreting the federal kidnapping statute." Frazier Br. at 29. So the discrepancy between the indictment and the instructions did not alter or risk altering the offense of conviction. Instead, it merely concerned the method by which the offense was committed, making it, if anything, a variance rather than an amendment. *See Martin*, 970 F.2d at 1543. Frazier does not argue, however, that the proof at trial varied from the indictment, much less materially so. So, we could end our discussion here. Frazier has not shown a material variance. We will add one note, however. Frazier argues that prejudice under plain error review, and presumably also the materiality of any variance, depends on whether the defendant had sufficient notice of the discrepancy to effectively "adduce or contr[o]vert evidence on the element" at trial. Frazier Reply Br. at 16–18. But Frazier's objections to the government's proposed instructions, submitted nearly a month before trial, show that he was well aware that the government might be permitted to argue that the kidnapping was done "for any reason." So, for that reason as well, he has not shown prejudice.

Duplicity. "An indictment is duplicitous if it sets forth separate and distinct crimes in one count." *United States v. Kakos*, 483 F.3d 441, 443 (6th Cir. 2007) (citation omitted). Frazier argues that the kidnapping of Cooper and the kidnapping of Bradley were distinct crimes properly charged as separate counts. He argues that this is so both because the "'unit of prosecution' for [any] § 1201 [offense] is the individual victim," Frazier Br. at 36, and because the inclusion of the "death . . . results," 18 U.S.C. § 1201(a), enhancement for Bradley differentiated the sentencing exposure and thus the offenses, Frazier Br. at 35 n.12.

Duplicity is an indictment defect that must be raised before trial. *See* Fed. R. Crim. P. 12(b)(3)(B)(i). Frazier did not do so. So he forfeited his challenge to the indictment itself. *See United States v. Davis*, 306 F.3d 398, 414–15 (6th Cir. 2002); *United States v. Soto*, 794 F.3d 635, 655 (6th Cir. 2015). But a duplicitous indictment also creates a risk that the jury might convict without the unanimity required by the Sixth Amendment. *United States v. Hall*, 979 F.3d 1107, 1116 (6th Cir. 2020). That problem, however, can be cured with jury instructions, either by requiring the government "to elect the charge within the count upon which it will rely" or by "particulariz[ing] the distinct offenses contained within the count." *Kakos*, 483 F.3d at 444. Appropriately, then, a defendant may object to harms flowing from a duplicitous indictment when the court allows the parties' input on jury instructions. *Id.* at 445. But, as explained below, Frazier did not do that either.

Assuming that the indictments were duplicitous, Frazier appears to agree that the court's instructions cured the alleged duplicity with respect to some elements by requiring the jury to find those elements satisfied for each victim. But he contends that the instructions on elements three (the instrumentality-of-commerce jurisdictional hook) and four (unlawful, knowing, or willful) did not require a finding for each victim and so left open the possibility that the jury returned a non-unanimous verdict on those elements. For instance, the jury was instructed that the government had to prove that Frazier "used [an] . . . instrumentality of interstate commerce in committing or in furtherance of the commission of the offense" but not that he used such an instrumentality in kidnapping Cooper *and* in kidnapping Bradley. R. 2393, PageID 16704.

Frazier did not object to these instructions, however. To the contrary, his proposed instructions also lacked the conjunctive language he faults the court for not including. Once again, we need not decide whether this amounts to waiver or invited error; at a minimum, plain error review applies and Frazier cannot meet that standard. And, to the extent he separately challenges the indictment itself, plain error review also applies. *Soto*, 794 F.3d at 656; *see also Kakos*, 483 F.3d at 445 n.1. Frazier has not shown a "plain error . . . that affected [his] substantial rights" nor one that, in our discretionary view, seriously "affected the fairness, integrity, or public reputation of the judicial proceedings." *Vonner*, 516 F.3d at 386 (citation modified).

Unlike the instructions in *United States v. Savoires*, 430 F.3d 376, 381 (6th Cir. 2005), the instructions here did not "authoriz[e] a conviction for a non-existent offense." Instead, they mapped out conduct wholly criminalized by the statute. And the odds of a nonunanimous verdict on these elements are slim.

First, it is not obvious that the instructions on elements three and four are even defective as written. To take element three, a conscientious juror might have understood "used [the phone] in" "kidnap[ping] . . . Bradley and . . . Cooper" to mean that Frazier used the phone in kidnapping each, not either, of them. R. 2393, PageID 16704. The same goes for whether "the defendant acted unlawfully, knowingly, and willfully" in "kidnap[ping] . . . Bradley and . . . Cooper." *Id.* Second, the evidence showing Frazier's use or imputed use of a phone in the kidnapping of each victim was both materially uncontroverted on the fact of that use and symmetrically credible. In other words, there is no good reason to disbelieve Cooper's testimony that Aldridge used a phone during her kidnapping but to believe Aldridge's testimony that Frazier used a phone when the group kidnapped Bradley, or vice versa.[15] And Frazier has made no argument that we should doubt that the jury was unanimous on his mens rea with respect to

[15]Frazier points to Aldridge's testimony that he was asleep when Cooper was kidnapped and to Cooper's testimony that Aldridge called Cooper "a few minutes" before the kidnapping to tell her to wait outside. R. 2415, PageID 19288–89. But this is not a contradiction. Alridge was "passing in and out" during the ride while "coming down or crashing from . . . methamphetamine." R. 2413, PageID 18899. Despite this somnolence, it was his idea to "pick . . . up" Cooper. *Id.* So we do not find it implausible that Alridge could have called Cooper and then fallen asleep, only to wake again when Cooper was in the car.

each kidnapping. Finally, the district court gave a separate instruction on the "death . . . results" enhancement as it pertained to Bradley. The court also separated that finding on the verdict form. These actions cure any issue with the indictment by ensuring that the jury was unanimous on whether Bradley's death resulted. Frazier has not shown plain error on this issue.

Constitutionality. Finally, Frazier raises two constitutional challenges to the kidnapping statute. First, he argues that making intrastate calls on a cellular phone lacks a sufficient nexus to interstate commerce to allow Congress to criminalize his conduct under the Commerce Clause. *See generally United States v. Allen*, 86 F.4th 295, 308 (6th Cir. 2023) (Murphy, J., concurring) (making a similar point). Second, he argues that the statute's residual purpose clause—"for ransom or reward *or otherwise*"—is unconstitutionally vague. *See generally United States v. Kerns*, 9 F.4th 342, 352 (6th Cir. 2021) (Readler, J., concurring) (discussing the argument). But Frazier didn't make these arguments below, so we review for plain error. Each argument is foreclosed by binding precedent. *See Windham*, 53 F.4th at 1010–13 (rejecting the Commerce Clause argument); *Kerns*, 9 F.4th at 351 (rejecting the vagueness argument). So there is no error, much less plain error.

Count 7. Frazier was also charged with committing a violent crime (kidnapping) in aid of racketeering activity. As relevant here, federal law prohibits "kidnap[ping] . . . in violation of the laws of any State or the United States" "for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity." 18 U.S.C. § 1959(a). The indictment charged that Frazier did so "in violation of Tennessee [law]." R. 485, PageID 1348.

Frazier suggested jury instructions requiring the government to prove that "[t]he two kidnappings violated state or federal law" and then noting that the court had "previously instructed you [the jury] as to the definitions of kidnapping, aggravated kidnapping, and especially aggravated kidnapping under Tennessee law," which the jury "should apply . . . to Count Seven." R. 1915-1, PageID 11058. The instructions given were materially identical. *See id.*; R. 2393, PageID 16709.

Frazier now argues that the discrepancy between the indictment, "violation of Tennessee [law]," and the instructions, "state or federal law" but "apply" "Tennessee law," is a constructive amendment. R. 485, PageID 1348; R. 2393, PageID 16709. Again, Frazier failed to object below, so we review for plain error.

Frazier has not shown an error, much less a plain one. Although the court should not have included "or federal law" in the instructions, it instructed the jury to "apply th[e] definition[]" "of kidnapping . . . under Tennessee law" "to Count Seven." R. 2393, PageID 16709. So we cannot say that "the instruction[], viewed as a whole, w[as] confusing, misleading, or prejudicial." *Kuehne*, 547 F.3d at 679 (citation modified).

For these reasons, no reversible error infects Frazier's convictions on Counts 6 and 7.

I. New Trial Motion

Boylston challenges the district court's decision to deny his motion for a new trial. We review "for an abuse of discretion, granting a new trial only where the interest of justice so requires." *Sherman*, 168 F.4th at 438 (citation modified).

After trial, Boylston's attorneys withdrew and were replaced by new counsel. Boylston then filed a motion for a new trial. He argued that prior to trial, the government had accepted his offer to plead guilty in principle but improperly conditioned its acceptance of the plea on Meyerholz also pleading guilty. The government responded that, while it had engaged in pretrial negotiations, the parties never reached an agreement. The government contacted Boylston's prior counsel, who agreed that no plea agreement had been reached and said that she had advised subsequent counsel of this fact. The district court denied the new trial motion, concluding that Boylston had provided "absolutely nothing from which the Court could conclude that a contract/plea agreement was reached." R. 2589, PageID 26372. The court also disagreed with Boylston's assertion that the government's "package deal" offer was improper. *Id.* at 26372–73.

Boylston has not shown clear error in the district court's finding that the parties didn't reach a plea agreement. *See United States v. Shank*, 543 F.3d 309, 312 (6th Cir. 2008). That leaves his argument that the "package deal" offer was improper. There was nothing improper about it. When offering a plea bargain, the government is "free to make the offer contingent on a guilty plea from [a] co-defendant." *United States v. Peterson*, 2026 WL 711524, at *4 (6th Cir. Mar. 13, 2026) (citing *United States v. Usher*, 703 F.2d 956, 958 (6th Cir. 1983)); *United States v. Carpenter*, 25 F. App'x 337, 344 (6th Cir. 2001). The district court didn't err by denying Boylston's motion for new trial.

IV. SENTENCING ISSUES

Finally, we turn to the defendants' challenges to their sentences. The challenges come in three subsets—the pronouncement of Frazier's sentence, procedural-reasonableness challenges, and substantive-reasonableness challenges.

A. Pronouncement of Frazier's Sentence

Frazier raises two challenges to the pronouncement of his sentence. First, he contends that there was a discrepancy between the oral sentence and the written judgment. We review de novo "an alleged discrepancy between oral and written sentences." *United States v. Booker*, 994 F.3d 591, 600 (6th Cir. 2021). "When an oral sentence conflicts with the written sentence, the oral sentence controls." *Id.* (citation modified).

At sentencing, the district court first imposed the mandatory sentences: two life sentences for murder, plus thirty consecutive years for four other counts. As for the remaining counts, the district court stated it would "specify in the judgment, as requested by counsel, for each of the counts, the amounts involved, but again, all of those will run concurrent with Count[s] Six and Eight [the mandatory life sentences], but not concurrent with those counts that are required to run consecutively." R. 2886, PageID 29413. The written judgment then listed individual sentences for the eighteen remaining counts.

Frazier moved to correct the judgment. He argued that when the court said it would "specify in the judgment, *as requested by counsel*, for each of the counts, the amounts involved," R. 2765, PageID 28048 (emphasis added), the court had orally adopted defense counsel's proposed sentence for each count, as set forth in Frazier's sentencing memorandum. But the sentences imposed in the judgment did not conform to those recommendations. The district court denied Frazier's motion to correct, stating that it had "never adopted, nor indicated it would adopt, Defendant's recommendations on" the remaining counts, and that consistent with its statement at sentencing, the court had imposed sentences for each remaining count in the written judgment. R. 2766, PageID 28052.

Frazier and the government rightly agree that an oral pronouncement controls a defendant's sentence. *See Booker*, 994 F.3d at 600. But when examining an oral pronouncement, our job is to determine what the oral pronouncement said—not what defense counsel may have interpreted it as saying. Here, the record confirms that the court's statement is most reasonably construed as a commitment to spell out the details of the remaining counts in the written judgment. The court clearly stated that it intended to "specify in the judgment . . . the amounts involved." R. 2886, PageID 29413. Neither the government nor Frazier objected to this procedure. The only phrase that created any ambiguity was the court's inclusion of the words "as requested by counsel." *Id.* But contrary to Frazier's contentions, these words do not clearly reflect the court's intent to adopt defense counsel's sentencing recommendations. There was no discussion of these specific recommendations either before or after this exchange. What's more, defense counsel's recommended sentences would have entailed substantial downward variances for the additional counts, but the record does not indicate that the court intended to vary downward. *See*, *e.g.*, *id.* at 29412 (noting that Frazier deserved the "strongest of all sentences"). If anything, the record reflects a focus by counsel and the court on the mandatory life sentences because the additional counts would not affect Frazier's time served. *See id.* at 29411 ("The fact of the matter is in the federal system life is life."); *id.* at 29413 (noting that all the additional counts in question "will run concurrent with [the life sentences]").

Even if the phrase "as requested by counsel" adds some ambiguity to the pronouncement, an ambiguous oral pronouncement can be "resolve[d]" by other evidence in the record, including the "written judgment." *United States v. Shaw*, 139 F.4th 548, 553 (6th Cir. 2025); *see United States v. Villano*, 816 F.2d 1448, 1451 (10th Cir. 1987) (en banc). Here, the written judgment confirms that the court did not wish to adopt defense counsel's recommendations. And we also have the court's post-judgment order stating that it "never adopted, nor indicated it would adopt, Defendant's recommendations on those [c]ounts." R. 2766, PageID 28052. So, we conclude that the oral pronouncement stated only that Frazier's remaining counts would be specified in a written judgment.

Frazier argues that if this is so, the court violated his right to be present at sentencing. *See United States v. Blake*, 166 F.4th 611, 626 (6th Cir. 2026) (noting that a defendant "has a Fifth Amendment Due Process right to be present at sentencing"); *see also United States v. Harrell*, 180 F.4th 888, 904–06 (6th Cir. 2026) (discussing such right under Fed. R. Crim. P. 43(a)). But Frazier did not object to the written pronouncement procedure at sentencing, nor did he raise the right to be present in his motion to correct the judgment. So we review for plain error. *See Harrell*, 180 F.4th at 904 (discussing a defendant's failure to raise his "right-to-presence argument" in a post-sentencing brief as well as in a post-judgment response). To show plain error, Frazier must show an "obvious or clear" error that affected both "defendant's substantial rights" and "the fairness, integrity, or public reputation of the judicial proceedings." *Vonner*, 516 F.3d at 386 (citation omitted). Frazier cannot clear this high bar.

We "must disregard any error that 'does not affect substantial rights.'" *United States v. Willis*, 162 F.4th 739, 744 (6th Cir. 2025) (quoting Fed. R. Crim. P. 52(a)). And Frazier does little to explain how his substantial rights were affected here. He has given us no reason to believe that his absence "affect[ed] the district court's selection of the sentence imposed or cause[d] the defendant to receive a more severe sentence, [or] that the same sentence would [not] be imposed on remand." *Harrell*, 180 F.4th at 902 (citation modified). Said differently, "[t]here is nothing in the record to suggest that [Frazier] could have done anything or would have gained anything if the court had sentenced [him] in person." *Id.* at 905 (citation modified). Indeed, the court has already indicated that its written judgment was "exactly" aligned with its intended sentence. R. 2766, PageID 28052. What's more, Frazier's "sentences run concurrently" to his two mandatory terms of life imprisonment. *Willis*, 162 F.4th at 744. So even "[i]f the district court resentenced [Frazier] to fewer months" on the disputed sentences, "he still would serve the exact same" time—life in prison, plus thirty years. *Id.* Frazier has not shown an effect on his substantial rights.

Nor has he shown any "error seriously affect[ing] the fairness, integrity or public reputation of judicial proceedings." *Id.* (quoting *United States v. Olano*, 507 U.S. 725, 732(1993)). Such cases arise "only in 'exceptional circumstances,' like when an error will require a defendant to serve extra time in prison." *Id.* (citation omitted). That is not the case here. So Frazier has not met the "difficult" "burden of establishing entitlement to relief for plain error." *Greer*, 593 U.S. at 508 (citation modified).

Second, Frazier argues that his conditions of supervised release are invalid. The district court imposed discretionary "standard conditions" of supervised release in Frazier's written judgment but made no mention of them during the oral pronouncement of the sentence. This was error. *See United States v. Hayden*, 102 F.4th 368, 374 (6th Cir. 2024) (noting that "the district court must alert defendants orally at sentencing that it is imposing" the discretionary "standard conditions" of supervised release). *But see id.* (recognizing that "neither we nor any of our sister circuits have held that the only way a district court can impose standard conditions is by reading them aloud from the bench at sentencing"; "[i]nstead, listing the standard conditions either in a districtwide general order or in the presentence investigation report and then adopting them by reference provides defendants with sufficient due process"). But the error was harmless. *See* Fed. R. Crim. P. 52(a). Frazier doesn't argue that the standard conditions should not apply to him, so Frazier has not raised "any meaningful substantive arguments" against the conditions. *Harrell*, 180 F.4th at 903. And as already discussed, Frazier is serving two mandatory life sentences followed by long consecutive sentences, meaning that there is no practical chance he will ever be placed on supervised release. Thus, reversal is not warranted.

B. Procedural Reasonableness

A sentence must be procedurally reasonable. *United States v. Rayyan*, 885 F.3d 436, 440 (6th Cir. 2018). Frazier, Hern, Santiago, and Stanley contend that theirs were not. Procedural reasonableness requires that the court "properly calculate the guidelines range, treat that range as advisory, consider the sentencing factors in 18 U.S.C. § 3553(a), refrain from considering impermissible factors, select the sentence based on facts that are not clearly erroneous, and adequately explain why it chose the sentence." *Id.* Generally, we review a procedural reasonableness challenge for an abuse of discretion. *Id.* If, however, the defendant failed to object below, we review for plain error. *Vonner*, 516 F.3d at 386.

i. Hern

Drug Quantity. Hern argues that the district court erred by setting his base offense level for the drug conspiracy at 38. He says that the district court improperly calculated the quantity of methamphetamine attributed to him because the evidence of purity was insufficient.

The Guidelines set the base offense level at 38 for "4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of 'Ice.'" U.S.S.G. § 2D1.1(c). The Guidelines treat Methamphetamine (actual) and "Ice" differently. *Reed*, 72 F.4th at 187. "Methamphetamine (actual) refers to the 'weight' of meth contained in a mixture," and "[i]t is calculated by multiplying the purity of the drug detected by the weight of the overall mixture." *United States v. Brown*, 2026 WL 1805159, at *3 (6th Cir. June 23, 2026) (quoting U.S.S.G. § 2D1.1(c) cmt. n.(B)). Meanwhile, "Ice" refers to methamphetamine that is at least 80% pure. *See* U.S.S.G. § 2D1.1(c), cmt. n.(C); *see also United States v. Ibarra*, Nos. 24-5174/5176/5248/5361, 2025 WL 1542319, at *10 (6th Cir. May 30, 2025). So this offense level applies if either the weight calculation of Methamphetamine (actual) amounts to at least 4.5KGs, or if Hern is responsible for at least 4.5 KGs of "Ice." U.S.S.G. § 2D1.1(c); *see also Reed*, 72 F.4th at 187. Hern asserts that while some of the seized methamphetamine exceeded the requisite 80% purity, those seizures occurred before he started selling drugs for the Clarksville Mongols in 2017. He says there is no evidence of the purity of the drugs that he subsequently distributed. Drug purity and weight calculations are factual findings reviewed for clear error. *Reed*, 72 F.4th at 190.

Hern's PSR explained that "[i]n total, the conspiracy involved more than 31 kilograms of methamphetamine (actual)." R. 2776, PageID 28361. "While not all the methamphetamine that was trafficked throughout the conspiracy was seized or submitted to a laboratory, the substances that were submitted were identified as methamphetamine with purity levels between 96% and 100% (with an average of 98.8%)." *Id.* As the government argued at Hern's sentencing, the evidence from the methamphetamine users indicated that it was extremely potent:

> [Y]ou have the testimony from multiple witnesses at trial who were regular drug users who were familiar with methamphetamine, the purity of methamphetamine, how it looked, the effects it would have when you were smoking almost pure methamphetamine versus shake and bake. They all talked about it being crystalized, being very high quality, high potency.

R. 2941, PageID 30200. And most importantly, the evidence established that the Clarksville Mongols obtained all their methamphetamine through the California Mongols' supplier. Given this evidence, "logic and inferences dictated that" Hern was responsible for the distribution of similarly potent methamphetamine. *Ibarra*, 2025 WL 1542319, at *10 (citation modified). So the district court didn't clearly err by concluding that the methamphetamine distributed by Hern had purity levels at or above 96%. *Id.*; *cf. United States v. Treadway*, 328 F.3d 878, 885 (6th Cir. 2003) ("Where exact drug quantity cannot be established, a district court may make a reasonable quantity estimate if that estimate is supported by the preponderance of the evidence."). And with that extrapolated purity level in mind, the amount of Methamphetamine (actual), or the amount of "Ice," attributable to Hern was certainly over 4.5 KGs.

Money Laundering Enhancement. Hern challenges the district court's application of the money laundering enhancement.

The Guidelines provide for a two-level enhancement "[i]f the defendant was convicted under 18 U.S.C. § 1956 [laundering of monetary instruments]." U.S.S.G. § 2S1.1(b)(2)(B). But the Guidelines commentary provides that the enhancement "shall not apply if the defendant was convicted of a conspiracy under 18 U.S.C. § 1956(h) and the sole object of that conspiracy was to commit an offense set forth in 18 U.S.C. § 1957." *Id.* § 2S1.1 cmt. n.3(C). Section 1957 criminalizes "engag[ing] or attempt[ing] to engage in a monetary transaction in criminally derived property" that "is derived from specified unlawful activity." 18 U.S.C. § 1957(a).

Hern was convicted under 18 U.S.C. § 1956, meaning that the enhancement applies unless Hern can avail himself of the exception. He meets the first requirement—he "was convicted of a conspiracy under 18 U.S.C. § 1956(h)." U.S.S.G. § 2S1.1 cmt. n.3(C). But he doesn't meet the second because the object of the conspiracy was to commit a violation of

§ 1956, not § 1957. Thus, the exception doesn't apply, and the district court didn't err by applying the money laundering enhancement.

Leadership Enhancement. Hern challenges the district court's application of the leadership enhancement.

The Guidelines provide for a four-level enhancement "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a). Relying on a case from the Second Circuit, Hern argues for the first time on appeal that in a RICO conspiracy case, this enhancement requires proof that he was a leader in the overall conspiracy, not just a leader in relation to a predicate act. Because he didn't raise this argument below, we review for plain error. *Vonner*, 516 F.3d at 386. That is fatal to Hern's claim because, as he admits, this court has never addressed this argument. "A lack of binding case law that answers the question presented will preclude our finding of plain error." *United States v. Prather*, 138 F.4th 963, 976 (6th Cir. 2025) (citation modified). The district court didn't plainly err by applying the leadership enhancement to Hern.

Accessory After the Fact. Hern argues that the district court miscalculated his Guidelines range for the accessory-after-the-fact count. He contends that the PSR erred by using the attempted-murder Guideline instead of the less severe aggravated-assault Guideline. But even assuming it was error to use the higher attempted-murder Guideline, the offense level scoring for the accessory-after-the-fact count had no bearing on his total offense level of 43, with level 43 "correspond[ing] to a life sentence regardless of criminal history." *United States v. Jones*, 417 F.3d 547, 550 (6th Cir. 2005). "Errors that do not affect the ultimate Guidelines range or sentence imposed are harmless and do not require resentencing." *United States v. Faulkner*, 926 F.3d 266, 275 (6th Cir. 2019); *see also United States v. Messer*, 71 F.4th 452, 462 (6th Cir. 2023). Any error here would be harmless.

Unlawful Restraint. Hern challenges the district court's scoring of his base offense level for the offense group, including his conviction for assault with a deadly weapon in aid of racketeering.

For violent crimes in aid of racketeering activity (such as Hern's conviction for assault with a deadly weapon in aid of racketeering), the Guidelines apply the greater of a base offense level 12 or "the offense level applicable to the underlying crime or racketeering activity." U.S.S.G. § 2E1.3(a). "If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used." *Id.* § 2E1.3 cmt. n.1. Because the underlying conduct involved Hern holding the victim at gunpoint, the district court concluded that the most analogous offense was "unlawful restraint[]," R. 2941, PageID 30197, to which the Guidelines assign a base offense level of 32, *see* U.S.S.G. § 2A4.1(a).

Hern argues that the district court erred by scoring the base offense level at 32. He doesn't explain how this was error, other than to say that he was found guilty of assault with a deadly weapon in aid of racketeering, not kidnapping. He posits, "If the appellate court trend is to frown on acquitted conduct being used to increase a defendant's Sentencing Guideline Range, surely uncharged conduct being used as an analogous base offense level inapposite of the offense charged is grossly unfair." Hern Br. at 29. But the district court followed the Guidelines and didn't err in considering the underlying conduct. *See Rayyan*, 885 F.3d at 441. In any event, as the government explains, "[t]he use of level 32 resulted in the addition of one-half unit" to his total offense level calculation, and even "without that half unit, Hern still would have received 3 additional offense levels, and his total combined offense level of 43 (and thus his guidelines sentence of life) would have remained the same." Government Br. at 268. Because Hern's Guidelines range wouldn't change, any error was harmless. *Faulkner*, 926 F.3d at 275.

Hern's sentence was procedurally reasonable.

ii. Santiago

Drug Quantity. Santiago argues that the district court erred by holding him responsible for 4.5 kilograms of Methamphetamine (actual), thus triggering a base offense level of 38. Like Hern, he challenges the purity determination made by the district court. He says the court should have used a standard methamphetamine calculation rate, rather than one for Methamphetamine (actual). If the court had done so, Santiago says, the base offense level would have been 32.

However, much like its treatment of Hern, the district court was free to extrapolate the drug purity calculation. As noted above, there was ample evidence that the methamphetamine used in this conspiracy was of high purity. And, as the district court noted at Santiago's sentencing, he was an integral part of the drug conspiracy; he "had a strong contact . . . with Chavez, who was the California point person" for the Clarksville Mongols' methamphetamine supply. R. 2942, PageID 30286. Because the drugs attributable to Santiago can include "those that were 'reasonably foreseeable' to him to be distributed as part of the conspiracy," *United States v. Simpson*, 138 F.4th 438, 446 (6th Cir. 2025), the district court did not clearly err in its extrapolation of drug purity, *see Reed*, 72 F.4th at 190.

Drug Premises Enhancement. Santiago argues that the district court erred by applying the drug premises enhancement. Pursuant to U.S.S.G. § 2D1.1(b)(12), the district court is to apply a two-level enhancement "[i]f the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance." "The enhancement applies to anyone who (1) knowingly (2) opens or maintains any place (3) for the purpose of manufacturing or distributing a controlled substance." *United States v. Bell*, 766 F.3d 634, 636–37 (6th Cir. 2014) (citation omitted).

The PSR recommended applying this enhancement based on Santiago's maintenance of two residences used to store drugs and proceeds, one in Kentucky and one in Tennessee, as well as his maintenance of a storage locker used to store drugs. The government later conceded, however, that the enhancement should not apply with respect to either the Tennessee home or the storage locker. Still, the government maintained that Santiago had sufficient control over the Kentucky home that the enhancement should apply. The district court agreed. We need not decide if sufficient evidence supported application of the drug premises enhancement. Even if Santiago was right, removing the two-level enhancement would take Santiago's total offense level from 46 to 44, a Guidelines life sentence either way. Any error therefore was harmless. *Faulkner*, 926 F.3d at 275.

Money Laundering Enhancement. Santiago challenges the application of the two-level money laundering enhancement. For the reasons already discussed regarding Hern's challenge to this enhancement, *see supra*, the district court didn't err by applying this enhancement when calculating Santiago's sentence.

Section 5H1.3 Departure. Santiago challenges the district court's refusal to grant a mental health departure pursuant to U.S.S.G. § 5H1.3. "The law in this circuit is clear that we" may not "review a decision of a district court not to depart downward, unless the record shows that the district court was unaware of, or did not understand, its discretion to make such a departure." *United States v. Greer*, 872 F.3d 790, 799 (6th Cir. 2017) (citation modified); *see also United States v. Puckett*, 422 F.3d 340, 346 (6th Cir. 2005). The district court was aware that it could depart but declined to do so. So we cannot review Santiago's claim.

Santiago's sentence was procedurally reasonable.

iii. Stanley

Leadership Enhancement. Stanley first challenges the district court's application of the three-level role-in-the-offense enhancement.

The three-level enhancement applies "[i]f the defendant was a manager or supervisor (but not an organizer or leader), and the criminal activity involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(b). While the activity needs to involve five or more participants, the "defendant must have *managed or supervised* 'one or more other participants.'" *United States v. Anderson*, 795 F.3d 613, 617 (6th Cir. 2015) (quoting U.S.S.G. § 3B1.1, cmt. n.2) (emphasis added). Courts consider the following non-exhaustive factors to determine whether the enhancement applies:

> the exercise of decision-making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

U.S.S.G. § 3B1.1, cmt. n.4. "We review the district court's legal conclusion that a person is an organizer or leader under § 3B1.1 deferentially, and its factual findings for clear error." *United States v. Green*, 167 F.4th 832, 861 (6th Cir. 2026) (citation modified).

The district court didn't err by applying the leadership enhancement. Stanley recruited Janie Lee and Adrianna Miles to sell methamphetamine for him. Lee testified that Stanley fronted drugs for her to sell, and that she sold the drugs for Stanley. She testified that she started selling a quarter of an ounce for Stanley, then graduated to ounces. She explained, "The first time [Stanley] fronted [the drugs] to me, and then I would pay up after that." R. 2420, PageID 20422. Stanley also introduced Lee and Miles to Frazier, Stanley's supplier, and included Miles on some of the drug supply runs from Frazier. Given this testimony, there is enough evidence to show that Stanley managed or supervised one or more participants. *Anderson*, 795 F.3d at 617.

Money Laundering Enhancement. Stanley challenges the application of the two-level money laundering enhancement. For the reasons already given regarding Hern's challenge to this enhancement, *see supra*, the district court didn't err by applying it when calculating Stanley's sentence.

Section 5K2.23 Departure. Stanley argues that the district court erred by not departing pursuant to U.S.S.G. § 5G1.3(b) because he spent twenty-six months in custody in Colorado, time for which he would not receive jail credit in the federal system. As stated previously, we cannot "review a decision of a district court not to depart downward" unless the district court didn't know of or understand its departure authority. *Greer*, 872 F.3d at 799 (citation omitted). The district court was aware that it could depart but declined to do so. So we may not review Stanley's claim.

Career Offender Designation. Stanley argues that the district court erred by determining that his conviction under Kentucky law for second-degree robbery was a crime of violence for the purposes of the career offender Guidelines. As the government explains, we need not address this argument because the district court properly applied the three-level leadership enhancement. With that enhancement properly scored, Stanley "remained subject to an offense level of at least 43 and thus faced a Guidelines sentence of life." Government Br. at 275. This is true "regardless of his criminal history category," meaning any alleged error was harmless. *Faulkner*, 926 F.3d at 275.

Stanley's sentence was procedurally reasonable.

iv. Frazier

Leadership Enhancement. Frazier adopts by reference Hern's argument regarding what is required for the leadership enhancement under U.S.S.G. § 3B1.1. That argument, which we again review for plain error, fails for the reasons stated with respect to Hern. *See supra*.

Money Laundering Enhancement. Frazier adopts by reference Hern's and Stanley's challenges to the application of the money laundering enhancement. For the reasons already discussed, that argument is meritless.

Leadership Enhancement. Frazier argues that the district court erred by applying a four-level leadership enhancement under U.S.S.G. § 3B1.1(a) for his role in kidnapping Cooper. He says that there was insufficient evidence to show that the offense involved "five or more participants." U.S.S.G. § 3B1.1(a).

We need not decide whether the enhancement applies. As the government explains in its brief, the enhancement had no effect on Frazier's total offense level or Guidelines range. Frazier offers no response to the government's position in his reply brief. To the extent there was any error, it was harmless and does not require resentencing. *Faulkner*, 926 F.3d at 275.

Frazier's sentence was procedurally reasonable.

C. Substantive Reasonableness

A sentence must be substantively reasonable. *Rayyan*, 885 F.3d at 442. A substantive-reasonableness challenge can include "a claim that a sentence is too long (if a defendant appeals)." *Id.* "The point is not that the district court failed to consider a factor or considered an inappropriate factor; that's the job of procedural unreasonableness." *Id.* Instead, "[i]t's a complaint that the court placed too much weight on some of the § 3553(a) factors and too little on others in sentencing the individual." *Id.* We review for an abuse of discretion, *id.*, and afford a rebuttable presumption of reasonableness to within-Guidelines sentences, *United States v. Bolds*, 511 F.3d 568, 581 (6th Cir. 2007).

i. Santiago

Santiago moved for a downward variance from the Guidelines sentence of life imprisonment. The district court granted the motion and sentenced Santiago to 480 months' imprisonment. Nonetheless, Santiago argues that his sentence is substantively unreasonable because the court didn't vary downward enough, specifically to the 240-months sentence he requested.

Because we presume that a sentence within the Guidelines is substantively reasonable, a defendant challenging a sentence below the Guidelines "bears an even more demanding burden" of showing unreasonableness. *United States v. Wells*, 55 F.4th 1086, 1093–94 (6th Cir. 2022) (citation omitted). Santiago cannot meet this burden.

Santiago faults the district court for not giving a larger variance based on his mental health issues stemming from his time in the military. But the court considered Santiago's mental health issues and gave "tremendous weight" to doctors' conclusions in 2012, 2017, and 2022 that Santiago had "no significant neurological impairments [or] mental issues." R. 2942, PageID 30532. What's more, the court concluded that Santiago's conduct after his discharge from the Army, including self-medicating, "created additional symptoms" and that he sought out the Clarksville Mongols not only for "comradery" and for "the structure like the Army, but also for the drugs and also for the ability to . . . live out that war experience in a civilian atmosphere." *Id.* Based on those actions, Santiago's post-arrest misconduct, and "given the drugs, given the violence, and given the firearm use, and given the length of time in his role in encouraging others who are going to get sentenced and have been sentenced, and those who are going to get mandatory life sentence[s]," the court was "very comfortable" with a 480-month sentence, which was below the Guidelines recommendation but not as low as Santiago requested. *Id.* at 30538. "We see no basis for second guessing that judgment." *Rayyan*, 885 F.3d at 443. Santiago's sentence is not substantively unreasonable.

ii. Stanley

Stanley moved for a downward variance from the Guidelines sentence of life imprisonment. The district court granted the motion and sentenced him to 222 months' imprisonment. Still, Stanley argues that his sentence is substantively unreasonable because he was not a violent individual and his involvement in the conspiracy lasted only for about six weeks.

Like Santiago, Stanley cannot meet the "demanding burden" of showing that his below-Guidelines sentence is substantively unreasonable. *Wells*, 55 F.4th at 1093–94 (citation omitted). In sentencing Stanley below the Guidelines recommendation of life, the court recognized that although the case "involved a lot of drugs, violence, firearms, and two murders," Stanley's "only part in this [was] drugs." R. 2973, PageID 31118–19. So the court credited that Stanley was not involved in violence or the use of firearms. And although Stanley was "properly calculated in Criminal History VI" and thus he was "determined by law to be a career offender," the court deemed Stanley "not a true Criminal History VI" given the nature of his prior convictions and the lengthy period over which they occurred. *Id.* at 31121. Nonetheless, the court found Stanley's conduct of distributing methamphetamine "serious" and "dangerous to [him]" and "dangerous to the public." *Id.* at 31119. And the court explained that prior convictions hadn't deterred Stanley—he had "plenty of opportunities, plenty of alarms that went off that should have in some way encouraged [him] to change." *Id.* In the end, the court believed that "the [G]uideline range [was] way excessive here for the conduct [Stanley] engaged in." *Id.* at 31122. So the court sentenced him—well below the Guidelines range of life—to 222 months. The decision not to go even lower was "well within the district court's considerable discretion." *United States v. Richards*, 164 F.4th 508, 522 (6th Cir. 2026). Stanley's sentence is not substantively unreasonable.

* * *

The district court ably managed this complex and sprawling case. Finding no reversible errors in its decisions, we AFFIRM.